

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 37

CURTIS PUBLISHING COMPANY, PETITIONER,

vs.

WALLACE BUTTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 12—Check requisition to Pierre Howard for Burnett—\$2000, voucher issued by Curtis Publishing Company	1380	1044
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No. 14—Check requisition to Frank Graham, Jr., for expenses incurred—\$512.09, being voucher issued by Curtis Publishing Com- pany	1382	1046
No. 15—Check requisition to Frank Graham, Jr.—\$38.59, being voucher issued by Curtis Publishing Company	1382	1046
No. 16—Memorandum from Bernie Moore, Commissioner, to Southeastern Conference Institutions on unnecessary roughness in college football, dated August 27, 1962	1383	1047
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No. 26—Letter from Wallace Butts to J. D. Bolton, dated October 22, 1962	1403	1067
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No. 28—Letter from Wallace Butts to Coach Johnny Griffith, dated October 22, 1962	1405	1069
No. 29—Letter from Wallace Butts to Coach Johnny Griffith dated February 26, 1963	1406	1070
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Exhibit "B"—Draft of Defendant's Exhibit No. 21, dated March 5, 1963	1451	1109
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Exhibit "B"—Motion of defendant, The Curtis Publishing Company, to dismiss in Bryant v. Curtis Publishing Company, No. 63-166 in U. S. D. C. for the Northern District of Alabama	1751	1355
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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 21,491

CURTIS PUBLISHING COMPANY, Appellant-Appellee,

versus

WALLACE BUTTS, Appellee-Appellant.

(AND REVERSE TITLE)

**Appeal from the United States District Court for the
Northern District of Georgia.**

**Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and
McRae, District Judge.**

JUDGMENT—Filed May 8, 1964

By the Court:

**On Consideration of the motion of appellant to dismiss
appellee's cross appeal, and of appellee's withdrawal of his
cross appeal, It Is Ordered that appellee be, and he is
hereby granted permission to withdraw his cross appeal
reserving his amendment filed February 24, 1964 to his
notice of cross appeal.**

[fol. 2]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPELLANT'S DESIGNATION OF PARTS OF RECORD TO BE
PRINTED—Filed April 30, 1964

1. Plaintiff's Complaint (filed March 25, 1963).
2. Defendant's Answer (filed April 10, 1963).
3. Defendant's Amended Answer (filed July 29, 1963).
4. Defendant's Motion to Compel Plaintiff to Answer Certain Questions Which Plaintiff Declined to Answer on Deposition Taken May 3, 1963; with attached list of questions submitted to plaintiff which he refused to answer (filed May 16, 1963).
5. Order of Judge Lewis R. Morgan Compelling Plaintiff to Answer Questions Listed in Defendant's Motion to Compel dated May 16, 1963 (filed June 5, 1963).
6. Order of Judge Lewis R. Morgan dated August 1, 1963, in regard to the Admissibility of Evidence of Alleged Specific Acts of Misconduct of the Plaintiff.
7. Pre-trial Order (dated August 5, 1963).
8. Transcript of evidence of the following named witnesses for the defendant:

Hugh Fleming:

Line 1, page 100, through line 5, page 113.

[fol. 3] *George Burnett:*

Line 12, page 113, through line 16, page 125.

Line 6, page 128, through line 6, page 169.

Line 12, page 172, through line 12, page 207.

J. D. Bolton:

Line 5, page 208, through line 12, page 242.

Jack C. Gorday:

Line 21, page 246, through line 23, page 252.

Coach Johnny Griffith:

Line 1, page 256, through line 3, page 347.

Line 21, page 369, through line 3, page 374.

Coach Frank Inman:

Line 15, page 374, through line 10, page 397.

Coach Leroy Pearce:

Line 3, page 399, through line 25, page 418.

Line 5, page 420, through line 13, page 445.

Line 11, page 446, through line 16, page 475.

9. Plaintiff's Motion for Directed Verdict:

Line 1, page 476, through page 483.

10. Transcript of evidence of the following named witnesses for the plaintiff:

Frank Graham, Jr.:

Line 3, page 492, through line 3, page 535.

Coach Paul William Bryant:

Line 23, page 537, through line 7, page 577.

Line 12, page 578, through line 13, page 592.

Line 1, page 593, through line 17, page 602.

[fol. 4] *Jimmy Sharp:*

Line 13, page 603, through line 11, page 612.

Charles Pell:

Line 16, page 613, through line 21, page 628.

John Gregory:

Line 19, page 629, through line 17, page 630.

Line 7, page 632, through line 19, page 667.

James Wallace Butts:

Line 4, page 670, through line 14, page 711.

Line 14, page 712, through line 2, page 719.

Line 23, page 724, through line 13, page 736.

Line 16, page 738, through line 13, page 746.

Line 10, page 748, through line 11, page 749.

LeRoy Jordon:

Line 16, page 755, through line 25, page 768.

Charles Louis Trippi:

Line 6, page 770, through line 14, page 780.

Raymond W. Clark:

Line 20, page 781, through line 10, page 786.

Robert Wallace Williamson:

Line 4, page 787, through line 24, page 793.

Mickey Babb:

Line 8, page 795, through line 4, page 809.

Samuel Richwine:

Line 16, page 809, through line 21, page 813.

[fol. 5] *Brigham Everett Woodward:*

Line 3, page 815, through line 6, page 818.

James Wallace Butts: (Continued).

Line 13, page 819, through line 5, page 821.

Line 1, page 822, through line 19, page 843.

Line 1, page 844, through line 18, page 846.

Line 1, page 847, through line 25, page 849.

Line 14, page 850, through line 21, page 851.

Line 1, page 853, through line 18, page 857.

Line 8, page 858, through line 7, page 877.

*Proffer of evidence made by defendant's counsel in
regard to specific acts of misconduct of plaintiff:*

Line 1, page 892, through line 22, page 907.

John Carmichael:

Line 1, page 878, through line 21, page 890.

Line 5, page 908, through line 14, page 939.

Line 1, page 1000, through line 4, page 1005.

Frank Graham, Jr.:

Line 15, page 939, through line 1, page 961.

Line 1, page 962, through line 6, page 998.

Line 18, page 1007, through line 13, page 1015.

Clay D. Blair, Jr.:

Line 9, page 1020, through line 5, page 1042.

Roger Kahn:

Line 20, page 1042, through line 14, page 1063.

Line 13, page 1064, through line 19, page 1069.

[fol. 6] *William C. Hartman, Jr.:*

Line 14, page 1070, through line 5, page 1090.

Line 3, page 1091, through line 14, page 1104.

Line 19, page 1120, through line 18, page 1133.

Charles Davis Thomas:

Line 5, page 1135, through line 11, page 1147.

Robert Henry Edwards:

Line 21, page 1151, through line 20, page 1152.

Furman Bisher:

Line 12, page 1156, through line 7, page 1161.

John C. Carmichael: (continued)

Line 20, page 1162, through line 15, page 1192.

Line 1, page 1193, through line 11, page 1194.

Line 13, page 1195, through line 11, page 1199.

11. Transcript of evidence of following named rebuttal witnesses of defendant:

Harold Heckman:

Line 10, page 1216, through line 10, page 1219.

Line 7, page 1223, through line 20, page 1223.

William T. Bradshaw:

Line 14, page 1224, through line 9, page 1236.

R. H. Driftmier:

Line 18, page 1236, through line 1, page 1240.

[fol. 7] *Dr. O. C. Aderhold:*

Line 8, page 1241, through line 9, page 1267.
 Line 1, page 1269, through line 15, page 1289.
 Line 1, page 1292, through line 5, page 1299.
 Line 7, page 1300, through line 4, page 1301.

Dr. Hugh Mills:

Line 2, page 1305, through line 20, page 1307.
 Line 23, page 1307, through line 11, page 1309.
 Line 17, page 1313, through line 11, page 1315.

J. D. Bolton:

Line 1, page 1316, through line 5, page 1319.
 Line 3, page 1320, through line 5, page 1331.

Frank Scoby:

Line 1, page 1340, through line 9, page 1354.
 Line 4, page 1355, through line 12, page 1358.

Dr. H. M. Davis:

Line 14, page 1359, through line 17, page 1362.

Frank Scoby: (Continued)

Line 8, page 1365, through line 1, page 1384.
 Line 15, page 1385, through line 7, page 1391.
 Line 5, page 1392, through line 9, page 1395.

Dr. O. C. Aderhold: (Continued)

Line 19, page 1398, through line 13, page 1406.

12. Transcript of evidence of following named rebuttal witnesses of plaintiff:

[fol. 8] *Dr. Frank Anthony Rose:*

Line 1, page 1409, through line 8, page 1447.
 Line 6, page 1448, through line 6, page 1458.
 Line 1, page 1459, through line 5, page 1459.

James Wallace Butts (Continued)

Line 13, page 1459, through line 21, page 1461.

13. Plaintiff's Requested Instructions to the Jury Identified as Number 5, 13 and 14.

14. Defendant's Requested Instructions to the Jury Identified as Number 3, 6, 8 and 14.
15. Plaintiff's Counsels' Argument to the Jury:
 - Line 1, page 1534, through line 20, page 1557.
 - Line 8, page 1560, through line 2, page 1591.
16. Charge of the Court to the Jury (line 16, page 1616 through line 13, page 1646, of the original record).
17. Transcript of Defendant's Exceptions to the Court's Charge to the Jury (line 11, page 1656, through line 23, page 1660, of the original record).
18. Judgment entered August 20, 1963.
19. Defendant's Motion for New Trial (filed August 29, 1963).
20. Defendant's Motion for Judgment Notwithstanding the Verdict (filed August 29, 1963).
- [fol. 9] 21. Order of Judge Lewis R. Morgan, dated January 14, 1964, Denying Defendant's Motion for Judgment Notwithstanding the Verdict.
22. Order of Judge Lewis R. Morgan, dated January 14, 1964, Granting Defendant's Motion for New Trial, Unless Plaintiff Remit All But \$460,000.00 of Judgment, Rendered in His Favor on August 20, 1963.
23. Order of Judge Lewis R. Morgan, dated January 15, 1964, Amending His Previous Order of January 14, 1964, on Defendant's Motion for New Trial.
24. Consent of Plaintiff to Remit (dated January 20, 1964).
25. Judgment of January 22, 1964, setting aside previous Judgment Rendered August 20, 1963, and Entering Judgment for Plaintiff in the Amount of \$460,000.00 and Overruling Defendant's Motion for New Trial.

26. Defendant's Notice of Appeal (filed January 24, 1964).
27. Plaintiff's Notice of Cross-Appeal (filed January 30, 1964).

28. Rule 10 entitled "Pre-trial and Trials" of the United States District Court for the Northern District of Georgia, as promulgated March 1, 1962, by the three Judges of said Court (including the form of Pre-trial Order prescribed by said rule).

29. Deposition of Wallace Butts taken May 3, 1963:
Line 11, page 58, through line 17, page 58.

[fol. 10]

30. Deposition of Wallace Butts taken July 16, 1963:
Line 6, page 92, through line 7, page 93.

31. Transcript of pretrial conference dated July 8, 1963:
Line 1, page 170, through line 2, page 182.
Line 20, page 184, through line 20, page 187.

32. Transcript of pre-trial conference dated July 29, 1963:

Line 24, page 121, through line 3, page 137.

Line 2, page 147, through line 12, page 147.

Line 18, page 165, through line 1, page 167.

Line 24, page 179, through line 10, page 180.

33. Transcript of proceedings on December 10, 1963, in regard to defendant's Motions for New Trial and Judgment Notwithstanding the Verdict:

Line 2, page 124, through line 17, page 125.

Line 4, page 126, through line 13, page 126.

Line 11, page 155, through line 2, page 157.

34. Documents introduced by defendant and admitted:

Clerk's Number:

- 4—The Saturday Evening Post—issue of 3/23/63
(only the article entitled "The Story of a College Football Fix.")

11—Butts' financial statement of July 17, 1961.

12—Burnett notes (seven pages).

13—Toll ticket (Butts to Bryant call) (both sides).

14—Toll ticket (Bryant to Butts call) (both sides).

[fol. 11]

19—Letter to Therrell—dated 3/26/63.

20—Letter—Butts to Aderhold—dated 2/23/63.

21—Letter—Rose to Aderhold—dated 3/6/63.

34—NCAA Const. and By-Laws (portion) (only one page).

35. Documents introduced by plaintiff and admitted:

Clerk's Number:

6—Memorandum addressed by Mr. Blair to staff members of The Saturday Evening Post.

16—Communication from Bernie Moore to Southeastern Conference Institution on unnecessary roughness in college football.

22—Financial Statement of Curtis Publishing Company (page 1—being a Consolidated Balance Sheet).

Submitted by: Welborn B. Cody, Attorney for Defendant.

Of Counsel: Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta, Georgia 30303, Jackson 2-7420.

[fol. 12] Certificate of Service (omitted in printing).

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**DESIGNATION BY APPELLEE OF ADDITIONAL MATTERS TO BE
INCLUDED IN THE RECORD—Filed April 30, 1964**

Appellee, as authorized by Rule 23(a) of the above named court, designates the following additional matters to be printed in the record in this action, in addition to those already designated by Appellant:

1. Motion of plaintiff to exclude all evidence obtained as a result of the alleged intercepted telephone conversation. (Identified in the Index of the Clerk of the United States District Court, Northern District of Georgia in this case as Volume I, Page No. 50).

[fol. 13] 2. Order of Judge Lewis R. Morgan dated 20th day of May 1963 denying plaintiff's motion to exclude evidence obtained as a result of telephone conversation. (Identified in the Index of the Clerk of the United States District Court, Northern District of Georgia in this case as Volume 1, Page No. 102).

3. Notice of amendment of plaintiff's cross appeal filed in Office of the Clerk, United States District Court, Northern District of Georgia, February 24, 1964.

4. Defendant's counsels' argument to the jury:

Line 5, page 1504, through line 5, page 1533 of Volume 3 of the Court Reporter's Transcript of proceedings in the trial court.

Line 23, page 1591, through line 25, page 1615 of Volume 3 of the Court Reporter's Transcript of proceedings in the trial court.

5. Jury's verdict as returned in open court:

Line 15, page 1662, through line 9, page 1663 from Volume 3 of the Court Reporter's Transcript of proceedings in the trial court.

6. Documents introduced by plaintiff and admitted in evidence:

CLERK'S NUMBER:

- 8 Check requisition to Milton Flack—\$500.00 being voucher issued by Curtis Publishing Company.
- [fol. 14]
- 9 Check requisition to Frank Graham, Jr.—\$2,000.00, being voucher issued by Curtis Publishing Company.
- 10 Check requisition to Furman Bisher—\$1,000.00, being voucher issued by Curtis Publishing Company.
- 11 Check requisition to Pierre Howard—\$500.00 being voucher issued by Curtis Publishing Company.
- 12 Check requisition to Pierre Howard for Burnett, 2-26-63, \$2,000.00, voucher issued by Curtis Publishing Company.
- 13 Check requisition to Pierre Howard for Burnett, \$3,000.00, being voucher issued by Curtis Publishing Company.
- 14 Check requisition to Frank Graham, Jr., for expenses incurred, \$512.09, being voucher issued by Curtis Publishing Company.
- 15 Check requisition to Frank Graham, Jr., \$38.59, being voucher issued by Curtis Publishing Company.
- 17 Communication to Intercollegiate Football Coaches, Commissioners and Officials, entitled "Unwarranted Viciousness and Brutality in our College Game."
- 21 Copy of a letter from Frank Graham, Jr. to Pierre Howard, 2-22-63.

[fol. 15]

- 24 The article entitled "Father is a Football Coach" beginning at page 37 in the November 20, 1954 issue of The Saturday Evening Post.
 - 25 The article entitled "Georgia Plays for Keeps" beginning at page 28 of the November 4, 1949 issue of The Saturday Evening Post.
 - 26 Copy of letter to J. D. Bolton from Wallace Butts dated 10-22-62.
 - 27 Copy of letter to J. D. Bolton from Wallace Butts dated 4-27-62.
 - 28 Copy of letter to Coach Johnny Griffith from Wallace Butts dated 10-22-62.
 - 29 Copy of letter to Coach Johnny Griffith from Wallace Butts dated 2-26-63.
7. Transcript of pre-trial conference dated July 8, 1963:
Line 5, page 48, through line 14, page 50.
Line 20, page 62, through line 21, page 62.
Line 15, page 145 through line 1, page 146..
 8. Transcript of pre-trial conference dated July 29, 1963:
Line 17, page 107 through line 19, page 108.
Line 11, page 121 through line 23, page 121.
 9. Transcript of evidence of the following named witnesses: (From the "Court Reporter's Transcript of Proceedings").

[fol. 16]

GEORGE BURNETT:

Line 6, page 128 through line 9, page 169.

HUGH FLEMMING:

Line 22, page 486 through line 18, page 488.

JAMES WALLACE BUTTS:

Line 23, page 724 through line 23, page 752.

LEROY JORDON:

Line 19, page 755 through line 17, page 769.

SAMUEL RICHWINE:

Line 16, page 809 through line 6, page 814.

JAMES WALLACE BUTTS: (Continued)

Line 1, page 844 through line 25, page 849.

WILLIAM C. HARTMAN, JR.:

Line 14, page 1070 through line 6, page 1090.

HAROLD HECKMAN:

Line 12, page 1216 through line 8, page 1221.

DR. O. C. ADERHOLD:

Line 1, page 1269 through line 24, page 1289.

DR. HUGH MILLS:

Line 12, page 1309 through line 16, page 1313.

J. D. BOLTON:

Line 6, page 1319 through line 2, page 1320.

[fol. 17]

FRANK SCOBY:

Line 10, page 1363 through line 7, page 1365.

Line 14, page 1384 through line 3, page 1385.

Respectfully submitted,

William H. Schroder, Allen E. Lockerman, T. M.
Smith, Attorneys for Wallace Butts, Appellee.

Of Counsel: Troutman, Sams, Schroder & Lockerman,
1605 William Oliver Bldg., Atlanta, Georgia 30303.

Certificate of Service (omitted in printing).

[fol. 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 8311

WALLACE BUTTS, Plaintiff,

versus

CURTIS PUBLISHING COMPANY, Defendant.

COMPLAINT—Filed March 25, 1963

Now comes Wallace Butts, as plaintiff, and names the Curtis Publishing Company as defendant, and for complaint says:

1.

Jurisdiction of this Court is founded on diversity of citizenship and amount. Plaintiff is a resident and citizen of the State of Georgia, residing in the City of Athens, Clark County, Georgia. The defendant is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in the City of Philadelphia. Defendant maintains an office and place of business at 805 Peachtree Street, N. E., Atlanta, Georgia, at which place service of this complaint may be perfected. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

[fol. 20]

2.

Plaintiff claims damages from the defendant in the amount of Ten Million (\$10,000,000.00) Dollars, as a result of a certain libelous publication by defendant as hereinafter alleged.

3.

Plaintiff has been engaged in the football coaching profession for approximately 35 years. Plaintiff began his coaching career in Madison, Georgia as head coach of Madison Agricultural and Mechanical School. After spending four years at Madison, plaintiff became football coach at Georgia Military College in Milledgeville, Georgia where, after remaining three years, he went to Louisville, Kentucky where he coached Louisville Male High for a period of three years. In 1938 plaintiff became assistant coach at the University of Georgia under Coach Joel Hunt and in the following year was elevated as head coach of the Georgia Bulldogs, which position he held until 1961 at which time he became Athletic Director of the University of Georgia.

4.

Plaintiff, during his career, has enjoyed a national reputation as a successful and respected member of the coaching profession and has been accorded many honors among which was his election in 1959 as president of the Football Coaches Association, a national organization of football coaches throughout America. Upon invitation he has coached the College All Stars, the Blue-Grey All Star Game and the North-South All Star Game. Plaintiff has during his career been widely sought as a speaker and lecturer at clinics, banquets and other such public gatherings throughout the United States. In addition, plaintiff has been approached and offered employment as head football coach by several colleges and professional football teams in the country due entirely to his reputation as a successful member and leader in his profession.

5.

The defendant is engaged in the publishing of several magazines and periodicals, the best known of which is the Saturday Evening Post. The Saturday Evening Post has

in years past been the chief and most valuable asset of the defendant due to its vast and impressive circulation and consequent advertising revenue. However, in the last several years the advertising revenues of the Saturday Evening Post have declined radically and drastically to the point that the magazine lost its status as a valuable income producing asset and showed staggering deficits. In an effort to rescue its foundering publication, the defendant elected new directors who in turn elected a new president who in turn made sweeping changes in the editorial staff and management of the Saturday Evening Post.

6.

In an apparent last ditch effort to bolster its sagging circulation, which in turn would increase advertising revenues, the Saturday Evening Post has resorted recently to the publishing and printing of lurid, defamatory and exposé type matter concerning nationally known personalities. All of this is in keeping with its announced new editorial policy as delivered recently through its Vice [fol. 22] President and Director of Editorial Development, Clay Blair, Jr., of "... sophisticated muckraking. ... We are going to provoke people, make them mad."

7.

Specifically, the defendant did wilfully, maliciously and falsely publish a libelous article concerning the plaintiff in its most recent issue bearing date March 23, 1963 entitled, "The Story of a College Football Fix" with sub-title "How Wally Butts and Bear Bryant Rigged a Game Last Fall."

8.

Plaintiff was informed prior to the actual circulation of said article on or about March 18, 1963, that the defendant had under consideration such an article and plaintiff did,

through his attorney, under date of March 11, 1963, send a telegram to the defendant, followed by a letter of the same date, advising the defendant that the proposed content of said article was false and that in the interest of fair and accurate reporting, said article be not published. A copy of said telegram and letter, marked respectively Exhibits "A" and "B" are incorporated herein by reference.

9.

In addition, and after said article was published and circulated, plaintiff, on March 18, 1963, pursuant to Georgia Code Section 105-720, requested that the defendant retract and correct the defamatory statements concerning the plaintiff in its said article, which to date defendant has refused to so do or even to reply to said request. A copy [fol. 23] of said telegram marked Exhibit "C" is incorporated herein by reference.

10.

- Plaintiff alleges that the publication of said libelous article has caused plaintiff extreme mortification and embarrassment in that same is a direct insult and attack on his honor, character, and integrity as a football coach. As stated in said article, "but careers will be ruined, that is true," plaintiff's career as a member of the football coaching profession has been ruined and destroyed by this scurrilous and contemptible defamation.

11.

The statements and insinuations contained in said article have damaged plaintiff as aforesaid in the following particulars:

(a) Plaintiff is charged in large block letters in the very title and sub-title of the article with being a "rigger and fixer."

(b) In an italicized editorial, plaintiff is charged with being a participant in the greatest and most shocking sports scandal since that of the Chicago White Sox in the 1919 World Series. In the same editorial, plaintiff is relegated to a status worse than that of "disreputable gamblers", a corrupt person who, employed to "educate and to guide young men" betrays or sells out his pupils.

(c) Plaintiff is charged with rigging and fixing the Alabama-Georgia football game with Coach Bryan as a gambling device in order to restore his financial resources.

[fol. 24]

(d) Plaintiff is charged with such a degree of corruptness and foulness that his betrayed players, as a result of plaintiff's alleged deception, fixing and rigging, were forced into the game like "rats in a maze", and "took a frightful physical beating."

(e) Defendant, in a final act of malice, contempt and editorial irresponsibility, closes its article with its definition of plaintiff as a fixer as being one who never leaves open a "chance" by stating "when a fixer works against you, that is the way he likes it."

12.

Plaintiff brings this action and seeks a recovery of Five Million (\$5,000,000.00) Dollars in general damages to compensate him for the injury to his peace, happiness and feelings, and in addition thereto sues for Five Million (\$5,000,000.00) Dollars in the nature of punitive damages to deter the defendant from repeating this trespass on plaintiff's honor, reputation and integrity.

Plaintiff Demands a Jury Trial.

Wherefore, plaintiff prays that process issue in terms of law, that the defendant be required to come into this Honorable Court and make its answer and that the plain-

tiff have judgment against the defendant for actual and [fol. 25] punitive damages in the sum of Ten Million (\$10,000,000.00) Dollars and costs.

William H. Schroder, Allen E. Lockerman, T. M. Smith, Jr.

Of Counsel: Troutman, Sams, Schroder & Lockerman,
1605 William-Oliver Building, Atlanta 3, Georgia.

IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 10, 1963

Now Comes, Curtis Publishing Company, the defendant in the foregoing case, and files this its Answer and shows to the Court:

First Defense

1. Defendant admits the averments of paragraph 1 of the Complaint.

2. Defendant admits that plaintiff claims damages from the defendant as a result of the publication complained of, [fol. 26] but denies each and every other averment contained in paragraph 2 of the Complaint.

3. Defendant admits the averments of paragraph 3 of the Complaint.

4. Defendant admits the averments of paragraph 4 of the Complaint.

5. Defendant admits the averments contained in the first sentence of paragraph 5 of the Complaint. The remaining averments of paragraph 5 of the Complaint require no answer, being subject to a Motion to Strike heretofore filed.

6. The averments of paragraph 6 of the Complaint require no answer, the same being subject to a Motion to Strike heretofore filed.

7. Defendant admits publication of the article referred to in paragraph 7 of the Complaint, but denies each and every other averment contained in said paragraph.

8. Defendant admits that the telegram and letter referred to in paragraph 8 of the Complaint were sent on behalf of the plaintiff and received by the defendant. Defendant is without knowledge or information sufficient to form a belief as to what information plaintiff had in his possession at the time of the sending of said telegram and letter. Defendant denies each and every other averment contained in paragraph 8 of the Complaint.

9. Defendant admits that plaintiff sent, and the defendant received, the telegram referred to in paragraph 9 of the Complaint and identified as Exhibit "C". Defendant [fol. 27] also admits that it has refused, and still refuses, to comply with the request contained in said telegram. Defendant denies each and every other averment contained in paragraph 9 of the Complaint.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10 as to the effect of the publication of the article complained of on plaintiff. Defendant denies each and every other averment contained in paragraph 10 of the Complaint.

11. Defendant denies each and every averment contained in paragraph 11 of the Complaint.

12. Defendant avers that paragraph 12 of the Complaint requires no answer.

Second Defense

1. Defendant avers that the statements in the article complained of which are of and concerning the plaintiff, are true.

Third Defense

1. The Complaint fails to state a claim upon which relief can be granted.

Wherefore, having fully answered, defendant prays for judgment in its behalf.

Welborn B. Cody, Attorney for Defendant.

[fol. 28] Of Counsel: Smith, Kilpatrick, Cody, Rogers & McClatchey, 1045 Hurt Building, Atlanta 3, Georgia, Jackson 2-7420.

IN UNITED STATES DISTRICT COURT

MOTION OF PLAINTIFF TO EXCLUDE ALL EVIDENCE OBTAINED AS A RESULT OF THE ALLEGED INTERCEPTED TELEPHONE CONVERSATION—Filed May 3, 1963

This case involves statements made by defendant in an article published under date of March 23, 1963, entitled "The Story of a College Fix," plaintiff asserting said statements to be libelous and defendant asserting them to be true. For the purpose of this motion only, a copy of said article is hereto attached, marked Exhibit "A".

A reading of the article set up as Exhibit "A" states that it is based on an alleged telephone conversation between plaintiff and Paul (Bear) Bryant, intercepted by one George Burnett. If any of said conversation took place as alleged, neither the interception by Burnett nor the use of the information obtained by Burnett or by defendant or anyone was authorized by either party to said conversation, and under the provisions of 47 U.S.C. § 605, no person having received the contents, substance, purport, effect or [fol. 29] meaning thereof, knowing how such information was obtained may divulge or publish the existence, contents, substance, purport, effect or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto.

If any such conversation took place as alleged by defendant, the use thereof in any manner is prohibited by such statute and, accordingly, plaintiff moves the Court for a ruling that no part of said alleged telephone conversation or any information gained as the result thereof may be used in evidence against plaintiff and that defendant may not on discovery make inquiries concerning the existence of or the contents of said alleged telephone conversation or any facts resulting from the knowledge thereof by defendant.

Plaintiff shows that a ruling at this time will substantially shorten the nature and extent of discovery and the scope of the trial.

W. H. Schroder, Allen E. Lockerman, T. M. Smith,
Jr., Attorneys for Plaintiff.

Of Counsel: Troutman, Sams, Schroder & Lockerman,
1605 William Oliver Building, Atlanta 3, Georgia.

[fol. 30]

IN UNITED STATES DISTRICT COURT

ORDER DENYING PLAINTIFF'S MOTION—Filed May 20, 1963

On May 3, 1963, the plaintiff in the above-styled case filed a motion to exclude all evidence obtained as a result of the alleged intercepted telephone conversation which may be offered in evidence against the plaintiff upon the trial of this case. The plaintiff contends that if any of the said conversation took place as alleged, neither the interception by Burnett nor the use of the information obtained by Burnett or by the defendant or by anyone was authorized by either party to the said conversation, and under the provisions of 47 U.S.C., Section 605, no person having received the contents, substance, purport, effect, or meaning thereof, knowing how such information was obtained, may divulge or publish the existence, contents, substance, pur-

port, effect, or meaning of the same, or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto. The plaintiff believes that, if any such conversation took place as alleged by the defendant, the use of this conversation in any manner is prohibited by the statute.

The defendant has filed its brief in opposition to the plaintiff's motion to exclude evidence relating to this alleged telephone conversation, and contends therein that a ruling at this time would be premature, since neither the Court nor the parties can accurately foresee the precise circumstances in which evidence relating to this conversation might arise, nor the numerous potential sources from which such evidence might be obtained.

[fol. 31] The Court wishes to make it clear that its opinions contained in this order constitute a *preliminary* ruling for the purposes of facilitating discovery and to serve as an indication of the present thinking of the Court. This is in no way a *final* ruling on the admissibility of evidence relating to evidence relating to the subject telephone conversation, as that determination will be made upon the trial of this case in August.

The principal thrust of the plaintiff's motion is based upon 47 U.S.C., Section 605, which has been set forth above. A violation of this provision is made criminal by 47 U.S.C., Section 501. It seems to this Court that Congress, through the enactment of this statute, sought to prohibit mechanical tampering with telephone communications by deliberate acts of wire tapping. As Judge Holtzoff said, in *United States v. Sullivan*, 116 F. Supp. 480, 481:

"It is obvious from the phraseology of the statute that it was aimed at actions of two types: First, it sought to prohibit a telephone switchboard operator from divulging any conversation that may be overheard, or telegram or radio operator from disclosing the contents of a telegram or radiogram; and Second, it sought to preclude any unauthorized person from

surreptitiously attaching some mechanical apparatus to a telephone wire and thereby listening to or otherwise intercepting communications passing over the wire without the knowledge of the parties to the conversation or message as the case may be." (Emphasis supplied)

In *United States v. Guller*, 101 F. Supp. 176, 178, in holding telephone conversations of the defendant which were [fol. 32] overheard by the eavesdropping of federal agents in an adjoining hotel room admissible over an objection based on Section 605, the District Court emphasized the absence of any physical interference with the communications facilities:

"The interception forbidden by Section 605 of the Communications Act of 1934, 47 U.S.C.A., Section 605, must be by some mechanical interpositions in the transmitting apparatus itself, that is, the interjection of an independent receiving device between the lips of the sender and the ear of the receiver."

In *Irvine v. People of the State of California*, 347 U.S. 128, 74 S. Ct. 381, 98 L. Ed. 561, the Supreme Court refused to extend the prohibition of Section 605 to electronic interceptions which were not achieved by wiretapping.

In this case, a concealed microphone was installed in the hall of a house, and a hole was bored in the roof of the house, from which wires were strung to transmit to a neighboring garage whatever sounds the microphone might pick up. Officers were posted in the garage to listen. Later, the microphone was placed in a closet where the device remained until its purpose of enabling the officers to overhear incriminating statements was accomplished. Justice Jackson remarked as follows:

"We should note that this is not a conventional instance of 'wire tapping'. Here the apparatus of the officers was not in any way connected with the tele-

phone facilities, there was no interference with the communications system, there was no interception of any message. All that was heard through the microphone [fol. 33] was what an eavesdropper, hidden in the hall, the bedroom, or the closet, might have heard. *We do not suppose it is illegal to testify to what another person is heard to say merely because he is saying it into a telephone.* We cannot sustain the contention that the conduct or reception of the evidence violated the Federal Communications Act. 48 Stat. 1103, 47 U.S.C., Sec. 605. Cf. *Nardone v. United States*, 308 U.S. 338; *Goldman v. United States*, 316 U. S. 129; *Schwartz v. Texas*, 344 U. S. 199." (Emphasis supplied)

In *De Lore v. Smith*, 67 Ore. 304, 132 Pac. 521, Judge McNary, of the Supreme Court of Oregon, stated:

"During the progress of the trial, defendant, for the purpose of showing knowledge upon the part of plaintiff of the return of the cattle to Gilcrest, gave testimony to the effect that he overheard a conversation between plaintiff and her daughter wherein the former was told the cows had been re-delivered to Gilcrest. Plaintiff's counsel objected to the testimony for the reason that the witness was an eavesdropper and thereby committed 'an act of gross impropriety and a moral wrong, and a witness testifying to such a conversation could not show any of the elements or conditions which must first be shown in order to admit evidence of such a conversation'. Defendant overheard the conversation, to which objection was made, at a point on the telephone intermediate between the home of plaintiff and her daughter, who is the wife of Gilcrest. In qualifying himself as a witness, defendant stated that *by chance he took down the receiver of the telephone* [fol. 34] when the parties were engaged in conversation and that he heard the declaration and knew the voices of the parties conversing. Since a time prac-

tically concurrent with the use of the telephone as a medium of communication, the Courts have held that a conversation had over the telephone was admissible when the witness could testify he recognized the voice of the party speaking. *While the practice of eaves-dropping or 'cutting in' on a telephone is most despicable, yet we cannot say as a rule of evidentiary law that the practice of this impropriety disqualifies a person who has qualified himself by testifying he recognized the voice of the speaker. Under the circumstances, the question whether the conversation did take place, its nature, and whether defendant correctly identified the voices engaged in the conversation was a fact for the jury.*" (Emphasis supplied)

In view of these authorities, it is the preliminary ruling of this Court that evidence relating to the Butts-Bryant telephone conversation is admissible in this civil action. Accordingly, the plaintiff's motion is denied.

The plaintiff has filed with this Court a motion for reconsideration of the Court's order of May 9, 1963, which refused to compel the defendant to answer Interrogatory No. 28 relating to the number of libel suits now pending against the defendant. Inasmuch as the Court has made a thorough study of this point, and has determined that it would be unwise and impractical to bring into this case evidence pertaining to other suits having nothing to do with the issues involved in the case at bar, the plaintiff's motion for reconsideration of the order dated May 9, 1963, is hereby denied.

[fol. 35]

It Is So Ordered.

This the 20th day of May, 1963.

Lewis R. Morgan, United States District Judge.

IN UNITED STATES DISTRICT COURT

ORDER CONCERNING MOTION TO COMPEL ANSWERS TO
CERTAIN QUESTIONS—Filed June 5, 1963

The defendant having filed with this Court a motion to compel answers to certain questions heretofore propounded to the plaintiff by deposition, and the Court having given consideration to the questions propounded by the attorneys for the defendant, and the plaintiff having refused to answer said questions upon advice of counsel, and it appearing to the Court that the answers to these questions propounded might be relevant and material to the issues involved, it is the order of the Court that the plaintiff be required to give answer to the questions propounded by the attorneys for the defendant at a time and place to be mutually agreed upon by the parties.

Upon motion seasonably made by the attorneys for the plaintiff, let the motion to compel and the answers thereto be placed in a sealed envelope and filed in the Clerk's Office of this Court, and the contents of the motion and the answers thereto not be revealed by the Clerk of the Court [fol. 36] or by the defendant except by permission of the Court, such as at the trial under circumstances as this Court specifies, all in accordance with the authority granted under Rule 30(b) of the Federal Rules of Civil Procedure.

It Is So Ordered.

This the 5th day of June, 1963.

Lewis R. Morgan, United States District Judge.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO DEFENDANT'S ANSWER—Filed July 29, 1963

Now Comes the defendant in the foregoing case and files this, its Amendment to the Answer heretofore filed, and for cause thereof shows to the Court:

1.

At the time the original Answer was filed, defendant made no answer to a part of paragraph 5 of the Complaint, and no answer to paragraph 6 of the Complaint, because simultaneously with the filing of said Answer the defendant filed a Motion to Strike part of paragraph 5 and all of paragraph 6 of the Complaint, which Motion to Strike has since been overruled.

[fol. 37]

2.

Defendant therefore answers that part of paragraph 5 of the Complaint which has not been heretofore answered, by alleging as follows:

5. Defendant admits that it is engaged in the publishing of several magazines and periodicals, the best known of which is The Saturday Evening Post; that The Saturday Evening Post has been and continues to be a valuable asset of the defendant; that beginning in 1960 and continuing until the middle of 1962 the advertising revenues of The Saturday Evening Post, as well as other magazines, declined; that in April 1962, the Board of Directors of defendant was increased from eleven to thirteen in number and two new directors were elected to fill the new directorships; that a new President of defendant was elected by the Board of Directors in July, 1962; and that substantial changes in the editorial staff and management of defendant's magazines, including The Saturday Evening Post,

have been made. Defendant denies each and every other averment contained in paragraph 5 of the Complaint.

3.

Answering paragraph 6 of the Complaint which has not been heretofore answered, defendant alleges as follows:

6. Defendant admits that beginning in the latter part of 1962, The Saturday Evening Post adopted an editorial policy of "sophisticated muckraking" in the [fol. 38] sense of printing the truth about the grave dangers facing the country, including the threat from outside the country and the deterioration of moral values within the country. Defendant denies each and every other averment contained in paragraph 6 of the Complaint.

Wherefore, having answered, defendant prays that this, its Amendment, be allowed and made a part of the record in said case.

Welborn B. Cody, Thomas E. Joiner, E. J. Boudurant, Jefferson Davis, Jr., Attorneys for Defendant.

Of Counsel: Smith, Kilpatrick, Cody, Rogers & McClatchey, 1045 Hurt Building, Atlanta, Georgia, 30303.
Jackson 2-7420

Certificate of Service (omitted in printing).

[fol. 39]

IN UNITED STATES DISTRICT COURT

ORDER REGARDING ADMISSIBILITY OF EVIDENCE—

Filed August 1, 1963

The defendant in this case contends that it intends to offer evidence at the trial as to specific acts of misconduct on the part of the plaintiff which fall into two categories. The first category includes acts of dishonesty on the part of the plaintiff in his dealings with the University of Georgia and also certain violations by him of standards of ethics to which the plaintiff is subject by reason of his employment with the University of Georgia, the University being a member of the Southeastern Conference and the National Collegiate Athletic Association. The second category concerning the activities of the plaintiff is that tending to show an illicit and adulterous relationship with a particular woman.

The defendant contends that under Rule 43(a) of the Federal Rules of Civil Procedure this evidence is admissible in Federal Courts. Rule 43(a) provides that in determining admissibility of evidence where there is a conflict between the State and the Federal rule, the plaintiff is entitled to the benefit of the more favorable rule. *Hambrice v. Woolworth*, 290 F. 2d 557.

However, on the question with which this Court is concerned and without passing upon the question as to whether the matter is substantive or procedural, it appears that there is no conflict between the Georgia rule and the Federal rule as to the admissibility of the specific acts of misconduct on the part of the plaintiff.

[fol. 40] Under the decision of *Cox v. Strickland*, 101 Ga. 482, it is held that the filing of a plea of justification in defense to an action of libel puts the plaintiff's character in issue, and the defendant has the right to show that the plaintiff's general character is bad, but cannot, in so doing, go into proof of specific acts or resort to general rumors by hearsay.

Neither under the majority of Federal decisions which this Court has studied would such tests be admissible. See *Tribune Association v. Follwell*, 107 F. 646; *Association v. Schenck*, 98 F. 925; *Morning Journal Association v. Duke*, 128 F. 657.

As was said in the *Schenck* case, supra, "It is not a defense to a libel or slander that the plaintiff has been guilty of offenses other than those imputed to him, or of offenses of a similar character; and such facts are not competent in mitigation of damages. The only tendency of such proof is to show, not that the plaintiff's reputation is bad, but that it ought to be bad."

As further authority sustaining the admissibility of such evidence, see *Wigmore on Evidence*, Third Edition, Section 209, where it is stated that the reputed character of the plaintiff in an action of defamation is admissible in mitigation of damages so long as proof of character is made by *reputation only*, but particular acts of misconduct are irrelevant and such evidence is universally regarded as improper.

However, the defendant, should the plaintiff place his good character in issue, would have the right on cross-examination to go into special facts to ascertain the nature and extent of the knowledge of the witness. *Cox v. Strickland*, 101 Ga. 482; *Smith v. State*, 91 Ga. App. 360. But in so doing, it is not permissible to prove specific acts, except on cross-examination for the purpose of testing the knowledge of the defendant's witnesses, and except for the purpose of impeaching knowingly false statements made by the defendant himself to the jury or by his witnesses on cross-examination. *Sikes v. State*, 76 Ga. App. 993; *Mimbs v. State*, 189 Ga. 189, 192; *Green on Evidence*, Sec. 138.

Counsel will be governed in the trial of this case by this expression of opinion.

It Is So Ordered.

This the 31st day of July, 1963.

Lewis R. Morgan, United States District Judge.

IN UNITED STATES DISTRICT COURT

PRE-TRIAL ORDER—Filed August 5, 1963

This Pre-Trial Order supersedes the pleadings and shall govern the trial of the case, but this Order, in the interest of justice, will be amended upon motion timely made.

1. In this action jurisdiction of the court is invoked upon [fol. 42] the ground of diversity of citizenship. The jurisdiction of the court is not disputed.

(a) There are no motions now pending in the case.

(b) No further discovery is desired by the parties in advance of trial, except that the defendant desires to take the deposition of Fred Nichols before or during the trial.

2. The names of the parties in the above caption are correct and complete and there is no question of misjoinder or nonjoinder.

3. The jury shall be qualified as to relationship to the parties to the case and to the following as counsel for plaintiff, to-wit:

Henry B. Troutman
Robert S. Sams
William H. Schroder
Allen E. Lockerman
T. M. Smith
Henry B. Troutman, Jr.
T. M. Smith, Jr.
Tench C. Coxe
Harold C. McKenzie, Jr.
Robert L. Pennington

(a) The procedure to be followed concerning questions to be propounded to the jury has been discussed and agreed upon at a previous pre-trial hearing.

4. A summary by plaintiff's counsel of plaintiff's cause of action is as follows:

[fol. 43] Wallace Butts, head coach of the University of Georgia football team from 1939 to 1961 when he became Athletic Director, is suing Curtis Publishing Company claiming that his reputation as a football coach has been damaged by a false and libelous article published in the March 23rd issue of the Saturday Evening Post charging him with having fixed and rigged the 1962 football game between the University of Georgia and the University of Alabama, as a gambling device, by furnishing Georgia's plays, defensive patterns and all the significant secrets possessed by Georgia's football team to Paul Bryant, head football coach of the University of Alabama prior to the game. The plaintiff alleges that he has been damaged by said libelous article in the respects set forth in his complaint to the extent of \$5,000,000.00 general damages and \$5,000,000.00 punitive damages.

5. A summary of defendant's contentions, including all special defenses, is as follows:

Defendant admits the publication of the article but contends that the statements therein complained of which are of and concerning the plaintiff are true. Defendant denies the conclusions of the plaintiff as to what charges are made by the article. Defendant contends that the article is not libelous per se and denies that the article libeled the plaintiff, and denies that the plaintiff was in the coaching profession at the time of the publication complained of. Defendant denies that plaintiff is entitled to recover any damages by reason of the publication of the article of which plaintiff complains.

6. No further amendments to the pleading are contemplated by the parties.

[fol. 44] 7. The documents likely to be offered in evidence by the parties or of which they have knowledge have been identified at the pre-trial hearing held on July 29, 1963 or on depositions and assigned tentative numbers. It was agreed that some of the documents will be admitted in evidence without objections. The authenticity of most of the documents was agreed upon. It is not intended for this Order to limit either party in the introduction of other documents.

8. Counsel for the parties have furnished each other a list of the probable witnesses to be used at the trial.

9. Various memoranda of authorities by counsel for each party on unusual questions of law involved in the case have heretofore been supplied to the Court.

10. The Court has ruled over objection by counsel for plaintiff that the second defense, as stated in the Answer of the defendant, is a plea of justification. Therefore, the defendant at the trial of this case will have the burden of proving the truth of the statements in the article which are of and concerning the plaintiff and the defendant will introduce its evidence first and will have the opening and concluding arguments.

11. It is estimated that the trial of the case will require approximately two weeks.

This the 5th day of August, 1963.

Lewis R. Morgan, United States District Judge.

[fol. 45]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WALLACE BUTTS, Plaintiff,

versus Civil Action No. 8311

CURTIS PUBLISHING COMPANY, Defendant.

JUDGMENT—August 20, 1963

This action came on for trial before the Court and a jury, Hon. Lewis R. Morgan, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.

It is Ordered and Adjudged that the plaintiff, Wallace Butts, recover of the defendant, Curtis Publishing Company, the sum of Sixty Thousand (\$60,000.00) Dollars general damages, and Three Million (\$3,000,000.00) Dollars punitive damages, with future interest thereon at the rate of seven (7) per cent as provided by law, and his costs of action.

Dated at Atlanta, Ga., this the 20th day of August, 1963.

B. G. Nash, Clerk, Ruth M. Stilwell, Deputy Clerk.

[fol. 46]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S MOTION FOR NEW TRIAL—

Filed August 29, 1963

Now Comes the defendant in the foregoing case and moves the Court to set aside the verdict of the jury returned herein on August 20, 1963, and the judgment entered thereon on the same date, and to grant a new trial on the following grounds, to-wit:

1.

Because of the gross excessiveness of the verdict, awarding \$3,000,000 in punitive damages is so exorbitant and flagrantly outrageous that it demonstrates beyond doubt that it is the product of bias and prejudice on the part of the jury and is in such an amount as to shock the conscience of the Court.

2.

That portion of the jury's verdict awarding the plaintiff \$3,000,000 punitive damages, violates and abridges and cannot be sustained without violating and abridging the right of freedom of speech and of the press guaranteed by [fol. 47] the First and Fourteenth Amendments of the United States Constitution because:

(a) The amount of such damages rested in the sole discretion of the jury without regard to any standard or limitation which would safeguard or take cognizance of those Constitutional guarantees;

(b) The stated purpose of such damages under the charge was to deter the defendant from repeating the trespass, and to warn others not to commit a like

[File endorsement omitted]

offense, with the result that the award of punitive damages by the jury especially in the amount of \$3,000,000, must constitute an attempt by the jury to effect a prior restraint upon future publication by this defendant or by other publishers or both;

(c) Georgia Code Sec. 105-2002, as construed by the Georgia courts, which defines the purpose of punitive damages in a libel action upon Georgia law and which in part served as the basis for the charge on that subject in this action, on its face permits the jury to attempt suppression of future publication by this defendant by an award of punitive damages;

(e) The amount of punitive damages, in the circumstances of this case, was so excessive as to violate and abridge through excessiveness alone, the guarantees of free speech and press.

[fol. 48]

3.

That portion of the jury's verdict awarding the plaintiff \$3,000,000 punitive damages violates and abridges and cannot be sustained without violating and abridging defendant's rights to substantive and procedural due process of law under the Fifth and Fourteenth Amendments of the United States Constitution, because:

(a) The amount of such damages rested in the sole discretion of the jury without regard to any standard or limitation;

(b) The amount of such damages in the circumstances of this case was so excessive as to constitute a deprivation of property without due process of law.

4.

Sec. 105-2002 of the Georgia Code as construed by the courts of Georgia violates and abridges defendant's rights under the Fourteenth Amendment of the United States

Constitution because the amount of damages which could be imposed under that Section rests in the sole discretion of the jury without regard to any standard or limitation, which damages are imposed *ex post facto*.

5.

Because evidence indicates that a material witness for the plaintiff testified falsely on a material point, as more fully set forth in affidavits filed with The Honorable Lewis R. Morgan contemporaneously herewith, which affidavits are incorporated herein by reference.

[fol. 49]

6.

Because the Court erred in refusing to permit counsel for the defendant to examine witness J. D. Bolton and to introduce documentary evidence regarding numerous telephone calls made by the plaintiff between October, 1961 and February 1, 1963, which telephone calls were charged to the University of Georgia in the amount of \$2,818.10. Said telephone calls were set forth in a 42-page document identified as defendant's Exhibit 17. Defendant contends that said telephone calls were made to individuals of questionable character, including a woman not his wife, to whom some 300 of said calls were made. That all of said telephone calls were charged to the University of Georgia, though none were in connection with the business of the University. The defendant proposed to show by the witness J. D. Bolton that defendant's Exhibit 17 was prepared by the plaintiff with the help of his secretary and with the help of the witness J. D. Bolton, and that after the list was completed, it was approved by the plaintiff as correct and the plaintiff so stated to J. D. Bolton. Defendant further proposed to show by the witness J. D. Bolton that it was not until after the institution of his litigation that the University officials learned of these telephone charges having been charged to the University of Georgia and that upon subsequent demand of the plaintiff for the

payment thereof, the plaintiff agreed that the list was correct and that he would reimburse the University. That thereafter on April 8, 1963, the plaintiff by letter to J. D. Bolton, Comptroller, agreed to make this payment, which letter was identified as defendant's Exhibit 18, and which letter was in the following language:

"I accept the final figure of \$2,818.10 as the correct amount I owe the Athletic Department of the University of Georgia for personal telephone calls charged to that account."

That the Court likewise excluded the foregoing letter from the evidence in said case after the same had been tendered by counsel for the defendant.

Defendant alleges and contends that the exclusion of such evidence and the refusal to permit defendant's counsel to examine J. D. Bolton with respect thereto was harmful and prejudicial to the defendant and constitutes grounds for a new trial.

7.

Because the Court erred in refusing to permit counsel for the defendant to introduce the depositions of George P. Anderson and William Baxter to prove the following facts:

(a) That they were employees of the Phoenix Hotel in Lexington, Kentucky in October, 1960.

(b) That plaintiff charged to the University of Georgia \$155.70 of alcoholic and other beverages purchased at said Phoenix Hotel in Lexington, Kentucky from October 21 through October 23, 1960.

(c) That on October 21, 1960, a registration at the Phoenix Hotel in Lexington, Kentucky in the name of "Lindsey, E. C. and wife" was made and was noted to be charged to the University of Georgia.

[fol. 51] In connection with these depositions, defendant's counsel offered to prove that none of the items referred to in (b) above were in connection with the business of the University of Georgia and that the registration referred to in (c) above was, in fact, arranged by the plaintiff for the woman referred to in Paragraph 6 hereof and the bill for her room and other hotel charges was, in fact, charged to the University of Georgia though these were not in connection with any business of the University.

That the refusal of the Court to permit the defendant to introduce said evidence was harmful and prejudicial and constitutes grounds for a new trial.

8.

Because the Court erred in refusing to permit counsel for the defendant to introduce the deposition of the woman referred to in paragraph 6 hereof, and because the Court refused to permit counsel for the defendant to introduce into evidence the deposition of James C. Tracy, an employee of Delta Air Lines, Inc., which depositions were to prove the following facts:

(a) That on January 26, 1962, the woman referred to in paragraph 6 hereof traveled from Miami, Florida, to Orlando, Florida, in the company of the plaintiff, her air line ticket having been purchased by the plaintiff through the use of Air Travel Credit Card No. DLQ 2834 WDL 2 and charged to the University of Georgia Athletic Association.

(b) That on May 9, 1962, a passenger described as "E. C. Smith" traveled via Delta Air Lines from Atlanta, Georgia, to Miami, Florida, on an air line ticket purchased by plaintiff and charged on Air Travel Credit Card DLQ 2834 WDL 2 to the University of Georgia Athletic Association.

(c) That on July 10, 1962, said woman, in the company of plaintiff, traveled from Atlanta, Georgia, to

Miami, Florida, via Delta Air Lines tickets which were purchased by plaintiff through the use of Air Travel Credit Card DLQ 2834 WDL 2 and charged to the University of Georgia Athletic Association.

(d) That on September 19, 1962, a passenger designated as "E. Smith" traveled from Atlanta, Georgia, to Birmingham, Alabama, via Delta Air Lines, Inc., under a ticket purchased by plaintiff and charged on Air Travel Credit Card DLQ 2834 WDL 2 and charged to the University of Georgia Athletic Association.

(e) That on November 7, 1962, a passenger designated as "E. Smith" traveled from Atlanta, Georgia, to Jacksonville, Florida, via Delta Air Lines, Inc., under a ticket purchased by plaintiff and charged on Air Travel Credit Card DLQ 2834 WDL 2 and charged to the University of Georgia Athletic Association.

(f) That on December 27, 1962, plaintiff and a passenger designated as "E. Smith" traveled from Birmingham, Alabama, to Atlanta, Georgia, via Eastern Air Lines, Inc., under tickets purchased by plaintiff and charged to Air Travel Credit Card DLQ 2834 WDL [fol. 53] 2 and charged to the University of Georgia Athletic Association.

(g) That on all of the transportation tickets referred to in subparagraphs (a) through (f) herein the plaintiff signed for the same and authorized them to be charged to the University of Georgia Athletic Association.

(h) That said "E. C. Smith" and "E. Smith", as referred to in subparagraphs (b), (d), (e) and (f) hereof, was in fact the same woman referred to in paragraph 6 of this Motion, and that none of said trips had any connection with business of the University of Georgia Athletic Association.

Defendant alleges and contends that the exclusion of such evidence was harmful and prejudicial to it and constitutes grounds for a new trial.

9.

Because the Court erred in refusing to permit counsel for the defendant to introduce the deposition of the woman referred to in paragraph 6 hereof, which deposition was taken by defendant's counsel on July 17, 1963, and refusing counsel for the defendant permission to call said woman as a witness for the purpose of questioning her as to the following:

(a) That said woman traveled with the plaintiff on numerous occasions, some of which were to football games participated in by the University of Georgia team, that plaintiff visited her in her hotel room, that [fol. 54] on at least two occasions plaintiff was seen drunk in her presence, that plaintiff paid her expenses on said trips and exhibited her to members of the University of Georgia football team, including the trip to Los Angeles, California, for the game between the University of Georgia and the University of Southern California, in 1960; to Lexington, Kentucky, for the game between the University of Georgia and the University of Kentucky, played on October 22, 1960; and the game between the University of Georgia and the University of Alabama in 1962, at which game plaintiff visited in her room at the Guest House Motel in Birmingham, Alabama; that she attended the football game in Jacksonville, Florida, between the University of Georgia and the University of Florida in November, 1962, her expenses having been paid by the plaintiff.

(b) That the plaintiff on a number of occasions during the time he was Athletic Director of the University of Georgia visited the Domino Lounge and the Copa-Cabana night clubs in Atlanta, Georgia, in the company of said woman, at which places liquor was served and

floor shows, consisting of so-called strip-teast artists, performed.

(c) That said woman visited plaintiff on numerous occasions in hotel and motel rooms in and around the City of Atlanta, Georgia, including the Atlanta Biltmore, Air Host Inn, Dinkler Plaza, Henry Grady and Piedmont Hotels.

(d) That plaintiff purchased and gave to said woman one 1961 Pontiac convertible, the license tag for which was registered in the name of said woman but the [fol. 55] conditional sales contract recorded in the public records in the office of the Clerk of the Superior Court of Clarke County, Georgia, disclosed the name of the plaintiff as the purchaser thereof.

(e) That on one occasion said woman accompanied plaintiff on a trip to Nassau in The Bahama Islands, on which trip no member of plaintiff's family was present.

Defendant alleges and contends that the exclusion of such evidence was harmful and prejudicial to it and constitutes grounds for a new trial.

10.

Because the Court erred in refusing to permit counsel for the defendant to question witness J. D. Bolton in regard to the embarrassment of some of the University of Georgia officials arising from the recording of a retention title contract for a 1961 Pontiac purchased by the plaintiff and in the name of the plaintiff from Boomershine Motors, Inc., of Atlanta, when said Pontiac was actually purchased for, and the license tag registered in the name of, the woman referred to in paragraph 6 hereof for the year 1962. Defendant's counsel offered to prove by the said J. D. Bolton that he confronted the plaintiff with the fact of this embarrassment and the plaintiff told said Bolton that he had

helped finance said automobile for said woman's brother, when, in fact, it was for her.

Defendant alleges and contends that the exclusion of such evidence as hereinbefore referred to was harmful and prejudicial to it and constitutes grounds for a new trial.

[fol. 56]

11.

Because the Court erred in refusing to permit counsel for the defendant to question witness J. D. Bolton in regard to the embarrassment of some of the officials of the University of Georgia arising from the fact that the plaintiff visited many times with the woman referred to in paragraph 6 hereof in her apartment in Atlanta, Georgia, while he was Coach and Athletic Director of the University of Georgia, making this known to others and causing common gossip to be spread around the community.

Defendant alleges and contends that the exclusion of such evidence as hereinbefore referred to was harmful and prejudicial to it and constitutes grounds for a new trial.

12.

Because the Court erred in refusing to permit counsel for the defendant to examine plaintiff as to the following:

(a) All of the facts and incidents set forth in the paragraphs numbered 6 through 11 of this Motion.

(b) As to the facts that plaintiff testified upon deposition that he did not know any person that goes by the name of "E. C. Lindsey".

(c) That, when confronted by J. D. Bolton, Comptroller of the University of Georgia, with a certain hotel bill described in paragraph 7(c) hereof, the plaintiff directed J. D. Bolton to send that bill to "E. C. Lindsey" at the address known as 50 Biscayne Drive, [fol. 57] N. E., Atlanta, Georgia, Apartment #5, which

was, in truth and in fact, the residence address of the woman referred to in paragraph 6 hereof.

(d) His knowledge as to his general reputation in the community and from that knowledge whether or not that reputation was good or bad.

Defendant alleges and contends that the exclusion of such evidence was harmful and prejudicial to it and constitutes grounds for a new trial.

13.

Defendant contends that the evidence referred to in paragraph 6 through 12 of this Motion was relevant, material and admissible for the following reasons, to-wit:

(a) To refute the testimony of the plaintiff that he had never done "anything that would injure the University of Georgia" and to affect the credibility of the plaintiff as a witness.

(b) To refute the allegations in plaintiff's Complaint which pray for punitive damages "to deter the defendant from repeating this trespass on plaintiff's honor, reputation and integrity," it being the contention of the defendant that such evidence tended to show a lack of honor, reputation and integrity on the part of the plaintiff.

(c) To mitigate damages, it being the contention of the defendant that a person guilty of such conduct [fol. 58] would not be a man of such delicate sensitivity who could suffer an injury to his peace, happiness and feelings by the alleged libelous article published by the defendant.

(d) To prove that the plaintiff was a corrupt man as such term was defined by the Court in its charge to mean "depraved, debased or perverted," plaintiff having alleged in his complaint and the plaintiff's counsel having argued to the jury that defendant accused him

in the alleged libelous article of being a corrupt person and said portion of the Complaint of defendant having been read to the jury by the Court in its charge.

(e) When the plaintiff in a libel action voluntarily takes the stand as a witness in his own behalf, he may be examined as to any specific acts of misconduct.

14.

Because the Court erred during the trial of the case by declining to permit counsel for defendant to cross-examine the plaintiff on the subject of his refusal on May 3, 1963 (when his deposition was being taken) to answer the following questions:

(a) "Will you tell the reporter what happened, the events that happened, leading up to that termination and how it was handled?" (meaning the termination of plaintiff's relationship as Athletic Director at the University of Georgia in 1963).

(b) "Do you remember whether or not from that [fol. 59] office on September 13, 1962, you put in a telephone call to Coach 'Bear' Bryant?" (meaning the office of Communications International, Inc. in Atlanta, Georgia).

(c) "Coach Butts I show you what has been identified as defendant's Exhibit 3 which consists of seven pages, and ask you if at this conference the original, of which this purports to be a photostat was exhibited to you?" (the conference referred to was that held in Attorney Cook Barwick's office on February 22, 1963, at which time certain officials of the University of Georgia were present, among them Dr. O. C. Aderhold, President, Mr. J. D. Bolton, Comptroller, William C. Hartment, Dr. Harmon Caldwell, Chancellor, and others. The Exhibit 3 referred to was the notes made by George Burnett concerning the alleged telephone conversation between the plaintiff and Coach Paul Bryant).

(d) "Did you, or not, make the statement at that time in the presence of these gentlemen who attended that conference that in substance, these notes shown on this Exhibit 3 were correct?"

(e) "Were you at that time apprised of the substance of George Burnett's story as he had told it to one of the University officials about this alleged telephone conversation?"

(f) "Did you, or not, state to those present at that conference that Burnett's story was substantially correct except that he had misunderstood or misinterpreted the effect of it?"

[fol. 60] (g) "Did you at that time at that conference admit to those present that you had a telephone conversation with Coach 'Bear' Bryant on September 13, 1962, which lasted 16 minutes and 3 seconds?"

(h) "Did you state to those present that George Burnett probably did hear the conversation that went on between you—the alleged conversation between you and Coach 'Bear' Bryant?"

(i) "Were you, or not, handed the original notes prepared by George Burnett on September 13, 1962, concerning the alleged telephone conversation with Coach 'Bear' Bryant?"

(j) "Do you recall in the alleged telephone conversation Coach 'Bear' Bryant stating to you that he would call you on the following Sunday, and, if so, did he actually call you on the following Sunday?"

(k) "At the time of your resignation in 1960, had you heard of any complaints from any of the alumni concerning your personal conduct?"

On May 3, 1963, the deposition of the plaintiff, having been called as an opposite party for cross-examination,

was taken by the defendant for purpose of discovery and for use as evidence at the trial.

Counsel for the defendant stated to the plaintiff (while he was on the witness stand and under cross-examination) that he wanted to read the foregoing questions that were propounded to the plaintiff at the time of such deposition [fol. 61] and then ask the plaintiff whether he at that time refused to answer all of said questions.

Defendant contends that it was entitled as a matter of right to demonstrate to the jury the plaintiff's reluctance to relate the facts no matter what his reason might be for such refusal; even though such refusal might have been based on the advice of his counsel. In any event, the defendant contends that it was entitled to show the demeanor of the witness and to show any reluctance on his part to testify, his manner of testifying, the nature of facts under inquiry, and the probability or improbability of his testimony, all of which bears materially on the credibility of the witness, particularly in a case in which the witness is the plaintiff seeking to recover damages in the sum of \$10,000,000.

Defendant, therefore, contends that such action on the part of the Court in excluding such evidence was prejudicial error for which a new trial should be granted.

15.

Because the Court erred in failing to instruct the jury as to the provisions of Georgia Code Sec. 38-1806 in accordance with a timely written request, as follows:

"What credit to impeached witness, question for jury.— When a witness shall be successfully contradicted as to a material matter, his credit as to other matters shall be for the jury, but if a witness shall swear wilfully and knowingly falsely, his testimony shall be disregarded entirely, unless corroborated by circumstances or other unimpeached evidence. The [fol. 62] credit to be given his testimony where im-

peached for general bad character or for contradictory statements out of court shall be for the jury to determine."

The above Georgia Code section constituted the Defendant's Request to Charge No. 3, which the Court prior to argument of counsel stated that such request would be given substantially as requested.

Defendant contends that said request of said charge was not given as requested, but instead the Court instructed the jury as follows:

"If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves. If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars. And you may reject all of the testimony of that witness or give it such credibility as you may think it deserves."

This charge was clear error for the Court eliminated entirely any reference to the mandatory provisions of Georgia Code Sec. 38-1806 which require that the jury shall disregard the entire testimony of a witness whom it finds to have testified wilfully and knowingly falsely, unless it shall also find that such testimony was also corroborated by circumstances or other unimpeached evidence.

[fol. 63]

16.

Because the Court erred in refusing to charge the jury as follows:

"Whenever a party presents himself as a witness and his evidence is contradictory, vague or equivocal, his testimony must be construed most strongly against him."

Counsel for defendant made such request to charge in writing, the same being designated Defendant's Request to Charge No. 6. Defendant contends that such a charge was proper and was adjusted to the evidence in said case for the reason that the plaintiff's testimony in many respects was contradictory, vague and equivocal, and under the circumstances the jury should have been instructed that his testimony should have been construed most strongly against him.

17.

Because the Court erred in refusing to allow counsel for the defendant to question John C. Carmichael, a witness for the plaintiff, concerning a previous conviction on September 19, 1933 for petty larceny in the State of Ohio, said crime involving the stealing of women's purses from theaters. Counsel for defendant had in his possession and presented to the Court a duly authenticated copy of said conviction and record of the said Carmichael.

The Court, in refusing to permit defendant's counsel to examine witness Carmichael in respect to this criminal record, stated that the ground for such refusal was the fact that the offense was committed thirty years ago. [fol. 64] The failure of the Court to allow counsel for the defendant to question the said Carmichael concerning his previous conviction was prejudicial to the defendant in that it prevented defendant from impeaching said witness of plaintiff by the proof of a crime involving moral turpitude.

18.

Because the Court erred in refusing to allow counsel for the defendant to question John C. Carmichael, a witness for the plaintiff, about, and to introduce into the evidence, the following:

1. An application for a permit for the sale of beer and wine to the City of Atlanta, Georgia, dated July 22, 1940, signed by the said Carmichael, wherein he

stated that he had never been convicted or plead guilty to a crime in any court. In fact, the said Carmichael had been convicted in a court in Ohio in 1933, as is set forth in more detail in the preceding paragraph of this Motion.

2. An application for a permit to sell beer, addressed to The Honorable Mayor and General Counsel of the City of Atlanta, Georgia, dated March 12, 1957, signed by the said Carmichael, wherein he stated as follows:

"Have you ever been convicted or plead guilty to a crime in any court? x"

Yes	No
-----	----

If so state the offense and date—1932—But I Was Not Guilty And Was Released."

[fol. 65] In fact, the said Carmichael had been found guilty of the crime in the State of Ohio set forth in more detail in the preceding paragraph of this Motion, and was convicted in the Criminal Court of Fulton County on March 22, 1950 of possessing illegal distilled spirits and alcohol, which latter conviction was admitted by the said Carmichael on the witness stand in this case.

The Court excluded such evidence or the questioning of the witness with respect thereto, but, in excluding the same, the Court did not assign any reason for such ruling. Defendant alleges and contends that such evidence was relevant, material and admissible for the following reasons:

- (a) It tended to impeach the witness.
- (b) It affected the credibility of the witness.

Defendant, therefore, alleges and contends that the exclusion of such evidence by the Court was harmful and prejudicial to it and constitutes a ground for a new trial.

Because the Court erred in allowing counsel for the plaintiff to examine, over the objection of counsel for the defendant, J. D. Bolton, Hugh Mills and Harold Heckman, all witnesses for the defendant, with respect to whether they knew of the reputation of the plaintiff's witnesses Hartman, Clark, Baird and Trippi, and as to whether or not such witnesses' reputations were good or bad in the community, and whether or not they would believe them on oath. Defendant contends that such questioning of defendant's witnesses was improper when the character and veracity of such of plaintiff's witnesses had not been brought into issue.

In allowing such questioning by counsel for the plaintiff, the Court relied upon Georgia Code § 38-1804, which Code section defendant contends is not in point or applicable to such ruling.

Defendant further alleges and contends that allowing counsel to question defendant's witnesses in such regard was harmful and prejudicial to the defendant and constitutes a ground for a new trial.

Because the Court erred in excluding the following testimony of George Burnett:

1. As to what Burnett asked the operator and as to the operator's answer to Burnett in regard to the extension number in Tuscaloosa, Alabama, to which Burnett had been connected, upon the ground that such testimony of Burnett was hearsay. Defendant contends and alleges that anything which Burnett himself said previously would not be hearsay, and further that the conversation between Burnett and the operator was reported in the alleged libelous article, the truth of which the defendant had the bur-

den of proving. Such testimony of Burnett was not offered to prove the truth of what the operator said, but rather to prove that his conversation with the operator did take place substantially as reported by the defendant in the alleged libelous article.

[fol. 67] 2. As to what Burnett said to Milton Flack and what Flack said to Burnett when Burnett called Flack after Burnett overheard the conversation between plaintiff and Paul Bryant. Such conversation between Burnett and Flack was reported in the alleged libelous article by the defendant. The Court excluded such testimony by Burnett on hearsay grounds. The defendant alleges and contends that anything said by Burnett previously would not be hearsay and that the entire conversation between Burnett and Flack was admissible not to prove the truth of what Flack said, but rather to prove that such conversation as reported by defendant in such alleged libelous article actually took place.

3. As to Burnett's testimony as to the conversation between Burnett and Bob Edwards on January 4, 1963. Said conversation was reported by defendant in the alleged libelous article. The Court excluded such testimony on hearsay grounds. The defendant alleges and contends that such testimony was not offered to prove the truth of what Edwards said, but rather to prove that such conversation between Burnett and Edwards as reported by defendant in the alleged libelous article, actually took place.

4. As to Burnett's testimony of what took place at a meeting attended by Burnett and certain officials of the University of Georgia in the office of Cook Barwick, attorney for the University of Georgia. The Court excluded such testimony on hearsay grounds. The defendant alleges and contends that the conversations which took place at such meeting in Cook Bar-

[fol. 68] wick's office were reported by it in the alleged libelous article, and that the testimony of Burnett was introduced to prove that such conversations did take place at such meeting, and not to prove the truth of the matter asserted by the participants in the meeting. In addition, defendant alleges and contends that the defendant was entitled to show the extent to which the officials of the University of Georgia questioned and checked upon George Burnett and his story, all of which illustrated the diligence of the defendant in its investigation of the story prior to its publication.

Defendant alleges and contends that the exclusion of such evidence was harmful and prejudicial to defendant and each exclusion is a ground for a new trial.

21.

Because the Court erred in admitting into evidence, over timely objection by defendant's counsel, plaintiff's Exhibits 16 and 17 which are, respectively, a memorandum on unnecessary roughness in college football and a letter from the President of the Football Coaches Association and the Chairman of the Football Rules Committee relating to unwarranted viciousness and brutality in college football.

The defendant contends that these Exhibits were inadmissible on the grounds that these documents were hearsay and were not relevant to any issue involved in this case and on the further ground that no proper foundation was laid for the admissibility of this evidence.

[fol. 69]

22.

Because of the following errors in plaintiff's counsel's closing arguments to the jury, which, even though not specifically objected to by counsel for the defendant, constitute significant and fundamental errors which the Court

may notice without objection and which it may take into consideration in exercising its discretion upon the motion of defendant for a new trial:

(a) Closing argument of Lockerman—

" . . . I think I likewise have a right to mention to you briefly that I probably have known Wally Butts longer than any man in this case. I was at Mercer University with Wally Butts when he played end on the football team there. He was in some respects a small man in stature, but he had more determination and more power to win than any man that I have ever seen in my life. I would not stand before you in this case today arguing in his behalf if I thought that Wally Butts would not tell you the truth when he raises his hand on this stand and swears to Almighty God that what he is going to tell you is the truth."

Defendant contends that the above argument is objectionable and improper since plaintiff's counsel introduced before the jury his own unsworn testimony as to the credibility of the plaintiff, when the actual evidence in the case was to the effect that plaintiff's reputation was bad and that witnesses would not believe him under oath. In such argument plaintiff's counsel clearly violated the established principle that an attorney in closing argument should not state to the jury his own belief regarding one of the [fol. 70] principal issues in the case, particularly when there was no testimony in the record whatsoever to that effect. This argument was particularly harmful in view of the fact that the Court had previously ruled that character witnesses on behalf of the plaintiff could be cross-examined as to their knowledge of specific instances of misconduct and the plaintiff deliberately failed to call such character witnesses. Thus, the argument of plaintiff's counsel denied defendant the right to an effective cross-examination.

(b) Closing argument of Lockerman—

"... and when that suit was filed the Curtis Publishing Company came into this court and filed its answer to it, and admitted every word in it. Now, since having done that, the Curtis Publishing Company is trying to contradict what it said in its own pleadings in judicio, here in the Court Room."

Defendant contends that the above argument is objectionable and is an improper misstatement of the facts, the same being so crucial that if accepted by the jury a verdict would be demanded for the plaintiff inasmuch as the jury is being told that the defendant admitted that the article is libelous and that the plaintiff was entitled to damages.

(c) Closing argument of Lockerman—

"In this very law suit alone that has been in every paper, every radio station, every television station for months and months and months, and recently hour on the hour, all over the world, they have gotten untold millions of dollars in publicity where the name 'Saturday Evening Post' is on the ears and the lips and tongue of all the people in the world.

"These reporters here, all over this Court Room, are sending this out. That is what they want. You could return a verdict for Wally Butts in this case of ten million dollars, and it would be the greatest merchandising bargain the Saturday Evening Post ever got. There is no way of telling—they could not have bought the publicity they have gotten in this case probably for fifty or seventy-five or a hundred million dollars, because it is worldwide, and you try to buy space in magazines, daily papers, radio stations, television stations all over the world where your name is mentioned every hour on the hour, such as this has been, you can't do it for any amount of money, and they have used Wally Butts for that purpose.

"If you should return a verdict in this case, say, for five million dollars, they would think that they had won the greatest victory that could possibly be returned in the case."

• Closing argument of Schroder—

"Now, listen to this, gentlemen. 'The final yardstick, we have about six lawsuits pending,' and he later identified those lawsuits as libel suits, 'meaning that we are hitting them where it hurts.' Proud of his libel suits, proud of the publicity, the free advertising he gets from his libel suits.

"Mr. Clay Blair, who wouldn't get on the stand and testify so you could see him, had this to say when his [fol. 72] deposition was taken, at page 44, which we read. 'I was not being facetious when I used the phrase "sophisticated muckraking". I meant it then and I mean it now.' Their type of sophisticated muckraking is this article here where they can get a mere germ of an idea that they know will sell and will cause people to get hit where it hurts them, and result in a libel suit with a \$100,000,000 worth of free advertising to them, and that is what they want. I will show you why that is what they want.

"Mr. Clay Blair, again, 'I changed the image of the Post. He said that the March 23 issue—that is the one with Butts' story in it—is a step in the right direction. This issue takes up twenty-five percent toward the goal of the magazine that I envision.'

"Gentlemen, if that is just twenty-five percent, that type of story toward the goal he envisions, what can we look for or hope to look for when that is multiplied four times.

"He says, Mr. Clay Blair, 'The Post advertising revenues fell from one hundred six million dollars in 1960 to eighty-six million in 1961, and to about sixty-six million in 1962. I did not like that trend dropping twenty million dollars from a one hundred six in 1960

to eighty-six in 1961 and again to sixty-two million in 1962.'

"That is when they changed the image. They have got to get those advertising revenues up, and I say that is the worse kind of libel that you can have. A [fol. 73] newspaper can print a libel because someone has given it some information that turned out to be inaccurate but when you go out and buy a libel—and they paid over \$9,000 for this story, which will show here in the voucher, paid \$9,000 for it—and did the reporting job that they did, they knew what they were getting, and they have it. One million dollars of free advertising."

. . . .

"I say, gentlemen, this is the time we have got to get them. A hundred million dollars in advertising, would ten percent of that be fair to Wally Butts for what they have done to him? Would a fifty percent assessment on each of the twenty-three million issues which they wrote about him there, would that be a strain or a burden on them?"

The defendant contends that this line or argument, so heavily emphasized by both of plaintiff's counsel, was clearly improper and prejudicial since it injected into the case assertions wholly unsubstantiated by any evidence whatsoever. For example, it was boldly asserted that the defendant received the benefit of \$50,000,000 to \$100,000,000 of free advertising solely because of this case; that it suggests a wholly improper measure of damages for consideration by the jury (that they might determine damages on the basis of some percentage of the wholly unsubstantiated assertions to the effect that the defendant had somehow directly profited from the notoriety attributable to the subject proceedings. The manner in which his argument was presented (for example, relatively indirectly by Lockerman on Friday followed by a direct and unqualified assertion by Schroder on Monday), seems almost calculated

[fol. 74] to deceive the jury into thinking that the assertions made were in fact true. The statements by Schroder were calculated to confuse the jury into correlating the alleged free advertising with the admitted substantial decline of advertising revenues, facts of which were introduced into evidence in the case over the objection of the defendant, and instilled in the jury the impression unsupported by any evidence that the defendant had profited in an astronomical amount by the notoriety incident to the trial.

(d) Closing argument of Schroder—

"Somebody has got to stop them. There is no law against it, and the only way that type of, as I call it, yellow journalism can be stopped is to let the Saturday Evening Post know that it is not going to get away with it today, tomorrow, or any more hereafter, and the only way their lesson can be brought home to them, gentlemen, is to hit them where it hurts them, and the only thing they know is money."

"I am looking to you for my protection. Heavens knows, if you let them out of this case for five million dollars or less, and boy, it's been worth it to them, I may be next, because they are not going to stop with that. You may be next; my wife; my children; or yourself. We have got to stop them now, and you are the only twelve in the world that can stop them."

Defendant contends that the above argument is wholly improper not only as attempting to unduly arouse the prejudice and passion of the jury, but also as injecting and suggesting a wholly improper consideration with respect to the measure of damages. The Georgia law does not authorize punitive damages to deter the defendant from repeating the alleged trespass against anyone other than the plaintiff.

(e) Closing argument of Lockerman—

"I am sorry that I may have appeared to have gotten right emotional about this matter. I am emotional about it. I am mad about it. There are just thousands and thousands of people who are mad about it too, and I believe that in your deliberations and in your final verdict that you are going to return the kind of verdict that will help restore Wally Butts as he should be restored in the eyes of the world."

Closing argument of Schroder—

"... They don't care about Butts. They wouldn't care about you or about me. They are just one step in the direction they are aiming."

"... They write about human beings; they killed him, his wife, his three lovely daughters. What do they care? They have got money; getting money for it."

[fol. 76] "... I think it would teach them that we don't have that kind of journalism down here, and we don't want it down here, and we don't want it to spread from 666 Fifth Avenue any further than that building right now."

Defendant contends that the above arguments are clearly objectionable as improperly appealing to the prejudices and passions of the jurors to the obvious injury and harm of the defendant.

(f) Closing argument of Schroder—

"... I have lived in agony with this man since I got the first notice that this was what was going to happen this Post article was coming out. I have seen him deteriorating ever since it came out, and I have lived in agony along with him, and it may be that the personal first-

hand knowledge that I have had since almost living with him and his family every day, I may have said some things or done some things or conducted myself in some manner that was displeasing to you. All I can say, I have done my best, and if I have done any of those things, don't hold it against Wally Butts."

Defendant contends that the above argument not only constitutes testimony by plaintiff's counsel, but also involves an improper and prejudicial attempt by argument to inject into the minds of the jurors allegations not specifically covered by the evidence.

(g) Closing argument of Lockerman—

"Mr. Cody is a fine lawyer. I respect him very much. I know that in this case that he is being persuaded by the Curtis Publishing Company, his client in the mat-[fol. 77] ter, in which he necessarily must avoid discussing the real issues."

"He [Mr. Cody] has seen fit to talk to you about anything except the truth of those charges."

Closing argument of Schroder—

"I want to begin by taking up where the Saturday Evening Post lawyer ended Friday." . . . Throughout that argument not two minutes were devoted to the merits of the case; not two minutes were devoted to the plea of justification, that is to say, that what is in that article published by the Saturday Evening Post is true."

Defendant contends that the above argument was improper, offensive and irrelevant and immaterial to any of the issues in the case and interjected personalities, thereby appealing to the prejudices and passions of the jurors.

Defendant, therefore, contends that all of the above arguments on the part of plaintiff's counsel were prejudicial

and harmful to the defendant and constitute errors for which a new trial should be granted.

23.

Because of the following errors in the Court's charge, which errors, even though not specifically objected to by counsel for the defendant, constitute significant errors which the Court may notice without objection and which [fol. 78] it may take into consideration in exercising its discretion upon this motion of defendant for a new trial:

(a) In giving the following charge in regard to punitive damages:

"The purpose of punitive damages is to deter the defendant from a repetition of the offense and is a warning to others not to commit a like offense. It is intended to protect the community and has an expression of ethical indignation, although the plaintiff receives the award."

The defendant contends that such charge is not a correct statement of the Georgia law of punitive damages in that punitive damages can only be given to deter the wrongdoer from repeating the trespass upon the plaintiff and not as a deterrent to third persons, nor can punitive damages be awarded for the protection of the community in general, but only for the protection of the plaintiff. Such charge was not anticipated by the defendant in that the plaintiff had requested a charge correctly stating the Georgia law of punitive damages and the Court stated that such charge was to be given substantially as requested by plaintiff, nor were such damages prayed for in plaintiff's complaint.

(b) In giving the following charge to the jury:

"Before you would be authorized to find punitive damages under the Georgia law, you must first determine that the plaintiff, Wallace Butts, is entitled to recover general damages. However, if you decide to

award punitive damages, the sum you award need have [fol. 79] no relationship to any amount that you may award for general damages. It may be greater or it may be less. That is a matter which rests in your sole discretion."

Defendant contends that the law requires that there must be a relationship between the general damages and the punitive damages which the jury is authorized to award the plaintiff.

(c) In giving the following charge to the jury:

"A defendant may show that it acted without malice and that there was neither actual malice nor any circumstances from which malice may be inferred. In a word, a defendant is permitted to show that, in publishing this article, it in good faith relied upon certain matters which had come to its attention. And if the jury accepts this as credible, this would go in mitigation of punitive damages."

Defendant contends that such charge is erroneous in that the impression was thereby conveyed to the jury that absence of actual malice would merely mitigate punitive damages, whereas the Georgia law is clearly that, in the absence of actual malice, no punitive damages can be awarded.

(d) The often repeated language in the charge to the effect that the defendant had the burden of proving the "statements in the article" to be true (there are seven repetitions of this in the charge) and the inconsistency of such language with the part of the charge dealing with substantial truth and the sting of the libel.

[fol. 80] Defendant contends that such confused the jury as to whether or not the defendant had the burden of prov-

ing the accuracy of all of the statements in the article, particularly since the Court failed to charge the defendant's request #8, which request was to the effect that defendant need not prove the truth of any statements made about anyone other than the plaintiff.

(e) By charging the jury as follows:

"I charge you that the law presumes that the plaintiff has a good reputation, and when a defamatory statement is made against him, the law presumes he has sustained injury to that reputation and to his feelings."

Defendant contends that the above charge was erroneous for the following reasons:

(i) That when evidence of bad character or reputation of the plaintiff is introduced, there is no longer a presumption that the plaintiff has a good reputation.

(ii) That the Court has not in the above quoted portion of the charge, nor in any other portion of the charge, clearly instructed the jury that the presumption of good reputation can be rebutted.

(iii) That the Court has not in the above quoted portion of the charge, nor in any other portion of the charge, clearly instructed the jury that the question of whether or not the plaintiff has a good reputation was for the jury in this case.

[fol. 81] Defendant, therefore, contends that such errors in the Court's charge were prejudicial and harmful to the defendant and constitute errors for which a new trial should be granted.

24.

Because the Court erred in charging the jury, over objection by the defendant, the following:

(a) That the alleged libelous article was libelous per se, as follows:

"Under the law of Georgia, if the publication was libelous per se, and I charge you that this article was libelous per se, and the law will presume that anyone so libeled must have suffered damage. In such case, no measure of damages can be prescribed, except through the enlightened consciences of impartial jurors."

Defendant contends that the article is not libelous per se.

(b) That the article was libelous per se as being a charge made with reference to the profession of the plaintiff and that the plaintiff was engaged in a profession at the time of the publication of the alleged libelous article, as follows:

"I charge you that under Georgia law, a written publication which affects one injuriously in his trade or calling, such as the plaintiff Butts' coaching profession in this case under consideration, and contains imputations against his honesty and integrity, and [fol. 82] which would, as its natural and probable consequence, occasion pecuniary loss, constitutes a cause of action and is libelous per se, and the rule follows to such damages as must be presumed to proximately and necessarily result from such a publication.

"I charge you that the words 'libelous per se' in this case mean words of such character that a presumption of the law arises therefrom that a party has been degraded in his business or professional reputation."

The defendant contends that the plaintiff was not in a profession at the time of the publication of the article.

Because the verdict is contrary to law and to the evidence in this case in that the plaintiff's complaint is clearly an action for alleged damages to his professional reputation and has been so construed by the Court, and by plaintiff's counsel, but the evidence at the trial showed without contradiction that the plaintiff was not engaged in a profession at the time of the publication of said alleged libelous article. Since plaintiff has not shown that he was engaged in a profession at the time of publication, the article was not libelous per se and due to the plaintiff's failure to allege or to prove special damages, a verdict in his favor for any amount whatsoever is not authorized and, therefore, the verdict was contrary to law and to the evidence introduced in the case and a new trial should be granted.

[fol. 83] Defendant reserves the right to amend this Motion with permission of the Court and to add additional grounds thereof after the Official Record is filed by the court reporter.

In addition to the foregoing Motion, the defendant moves the Court to enlarge the time for filing additional affidavits and documents under Rule 59(c), which affidavits and documents may further substantiate the grounds for any part of the foregoing Motion.

Wherefore, defendant prays that a new trial be granted in said case on any one or all of the grounds hereinbefore stated.

Request is hereby made for an oral argument on this Motion.

Welborn B. Cody, Thomas E. Joiner, E. J. Bondurant, Jefferson Davis, Jr., Attorneys for Defendant.

Of Counsel: Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta 3, Georgia.

[fol. 84]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING
THE VERDICT—Filed August 29, 1963

[Title omitted]

Defendant moves the Court to set aside the verdict entered in the above-entitled action on August 20, 1963, and the judgment entered thereon on the same date, and to enter judgment in accordance with defendant's motion for directed verdict.

Defendant's motion for directed verdict should have been granted because the plaintiff's action is clearly one for alleged damages to his professional reputation and his complaint has been so construed by the Court and by plaintiff's counsel, but the evidence at the trial showed, without contradiction, that the plaintiff was not engaged in a profession at the time the alleged libelous article was published. Since plaintiff has not shown that he was engaged in a profession at the time of publication, the article was not libelous per se and due to the plaintiff's failure to allege or to prove special damages, a verdict in his favor for any amount is not authorized and, therefore, the defendant's motion for a directed verdict should have been [fol. 85] granted, and this motion for judgment notwithstanding the verdict should be granted.

Welborn B. Cody, Thomas E. Joiner, E. J. Bonderant, Jefferson Davis, Jr., Attorneys for Defendant.

Of Counsel: Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta 3, Georgia.

IN UNITED STATES DISTRICT COURT

ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT—Filed January 14, 1964

The defendant herein has filed a motion for judgment notwithstanding the verdict, contending in said motion that the plaintiff is not entitled to any recovery since the evidence established without contradiction that he was not, at the time of the publication of the charge complained of, in the profession of a football coach, and because he neither claimed nor offered evidence of any special damage incurred by him as a result of the publication.

It was the ruling of this Court at the time of trial, and the jury was so instructed, that "a written publication [fol. 86] which affects one injuriously in his trade or calling, such as the plaintiff Butts' coaching profession in this case under consideration, and contains imputations against his honesty and integrity, and which would, as its natural and probable consequence, occasion pecuniary loss, constitutes a cause of action and is libelous per se."

There is a strong thread running throughout the trial of this case and the many hearings which preceded the trial that this article was being held by this Court to be libelous per se for the reason that it degraded him in his business or professional reputation. The plaintiff and defendant discuss at length in their respective briefs whether the article would have been libelous per se even if plaintiff had not been engaged in his profession at the moment of libel. There is overwhelming authority to the effect that this would in fact be the case; *Weatherholt v. Howard*, 143 Ga. 41; *Estes v. Sterchi Bros. Stores, Inc.*, 50 Ga. App. 619, 179 S. E. 222; numerous other decisions and treatises. However, the Court is prepared to stand squarely on the issue of the article's having hurt him in his profession as the basis for the ruling of libelous per se.

The plaintiff's name was synonymous with University of Georgia football for some 25 years. He had served as

President of the American Football Coaches Association; he was one of the few coaches to be selected to serve on the important Rules Committee; he was admittedly widely known and respected as a successful coach and as an eminent authority in the sport of football. Can it be sincerely argued by the defendant that this man, who is in his mid-fifties, is not injured *legally* in the eyes of the football world, simply because he had not officially occupied a position of employment in this field for a period of six to eight weeks? Future employment quite probably would have [fol. 87] occurred, and in what capacity other than that to which he had given his whole life?

Law is perverted from its proper function when it multiplies impediments to justice without the warrant of clear necessity. By the rigid technicalities sought to be imposed by the defendant, the plaintiff, caught in a mesh of procedural and technical complexities, is told there is only one way out of them, and that is to have filed his lawsuit a few days earlier, while still listed on the employment rolls of The University of Georgia, *prior to the publication of the subject article.*

Because of that omission, it being of course impossible to do, he is to be left ensnared in the web—the processes of the law, so it is said, being impotent to set him free.

This Court does not believe that paths to justice are so few and narrow. I think we should hesitate quite a long time before committing our procedure to so sterile a conclusion.

Accordingly, the motion for judgment notwithstanding the verdict is denied.

It Is So Ordered.

This the 14th day of January, 1964.

Lewis R. Morgan, United States District Judge.

[fol. 88]

IN UNITED STATES DISTRICT COURT

OPINION AND ORDER GRANTING MOTION FOR NEW TRIAL—
Filed January 14, 1964

The jury in this libel action returned a verdict for general damages against the defendant in the sum of \$60,000.00 and for punitive damages in the sum of \$3,000,000.00.

The defendant moves, under Rule 59 of the Federal Rules of Civil Procedure, 28 U.S.C.A., to set aside the verdict for damages principally upon the ground of excessiveness, as set out in Ground 1 of the defendant's motion. Apart from defendant's contention that the verdict is excessive, the defendant sets out 23 other grounds in its motion for a new trial (Ground 5 of defendant's motion having been abandoned).

The cause of action by plaintiff arose by virtue of an article published by defendant in its March 23, 1963, issue of the *Saturday Evening Post*, said article having been principally written by one Frank Graham, Jr., but with assistance from others employed by the defendant. The article was entitled "The Story of a College Football Fix", with the subtitle "How Wally Butts and Bear Bryant Rigged a Game Last Fall". The article concerned alleged information on Georgia plays given by Butts to Coach Bryant relating to the Alabama-Georgia football game played in Birmingham, Alabama, in September, 1962.

The article charged Butts with being corrupt and with betraying his players, and that the players were forced into the game like "rats in a maze" and "took a frightful physical beating". The article charged, in an italicized [fol. 89] editorial, Butts, along with Coach Bryant, with being a participant in the greatest and most shocking sports scandal since that of the Chicago White Sox in the 1919 World Series. In the same editorial Butts was relegated to a status worse than that of "disreputable gamblers", and a

corrupt person who, employed to "educate and guide young men", betrays or sells out his pupils.

Plaintiff Butts had been Head Football Coach at the University of Georgia from 1939 until 1961, at which time he became Athletic Director. As a member of his profession, he had been president of the Football Coaches Association, and by invitation had coached the College All-Stars, the Blue-Gray All Star Game, and the North-South All Star Game. Butts had been a lecturer and speaker at clinics and banquets throughout the United States. Testimony adduced was that plaintiff had been offered employment by several college and professional football teams in the country and was negotiating with a Texas professional team when the article was published, but thereafter negotiations were discontinued.

Evidence was introduced that on March 18, 1963, Butts, through his attorney, notified the Curtis Publishing Company that the article was false and advised that the article not be published; and that thereafter, pursuant to Georgia law, Butts requested a retraction from Curtis, which was refused. It was admitted on the trial that one of Butts' daughters had telephoned long distance to a *Saturday Evening Post* official with a plea that the article be withheld from publication. The evidence of plaintiff showed that plaintiff was capable of earning a minimum of \$12,000.00 per annum from his football activities, but that since the publication, all prior negotiations had been terminated. [fol. 90] The defendant filed its answer of justification and plead that the statements in the article were true. The defendant thus assumed the burden of proving the truth of the article. See *Cox v. Strickland*, 101 Ga. 482.

Curtis Publishing Company based its defense on certain notes taken by one George Burnett who made such notes to a telephone conversation alleged to have been overheard between Coach Bear Bryant, of the University of Alabama, and Butts, as Athletic Director of the University of Georgia, on a morning in September, a few days prior to the Alabama-Georgia Game. By some mechanical de-

fect, Burnett was connected by telephone to the conversation. These rough notes were kept by Burnett and revealed to Head Coach Johnny Griffith, of the University of Georgia, in late December, 1962, or early January, 1963. Curtis paid Burnett consideration for the story after the Alabama, lawyers, who were defending Curtis in a libel suit brought by Coach Bryant because of another article in the *Saturday Evening Post*.

The evidence presented showed that Frank Graham, Jr., the author of the article, and Davis Thomas, Senior Editor of the *Saturday Evening Post*, knew that Burnett had been convicted of "bad check writing". No representative of the *Post* looked at the notes before the article was published. According to Coach Griffith of Georgia, defendant's witness, "a good number of Burnett's notes were incorrect and didn't even apply to anything Georgia had." No effort was made by the *Post* to view the actual game film, although the Sports Editor of the *Post*, one Roger Kann, considered that necessary.

[fol. 91] Inserted in the article were the following direct quotations, which were subsequently denied under oath by the parties quoted:

(1) Graham wrote that Burnett had told him that Larry Rakestraw, Georgia quarterback, placed his feet in a certain position while on offense, thereby tipping off the defensive team as to whether the Georgia play would be a run or a pass. Burnett later testified under oath that he had not told Graham any such thing.

(2) Mickey Babb, another Georgia football player, specifically denied the quotation in the article attributed to him pertaining to knowledge by the Alabama team of the Georgia formations and plays. Babb was quoted in the article as saying the Alabama players knew Georgia's key play (eighty-eight pop) and knew when Georgia would use it. Babb testified Georgia had no "eighty-eight pop" play. This was confirmed by Coach Johnny Griffith.

(3) Sam Richwine, the Georgia trainer, specifically and categorically denied the quotation in the article attributed to him, which was also to the effect that Alabama knew Georgia's plays.

(4) Coach Johnny Griffith categorically denied three separate and distinct quotations in the article that were attributed to him.

(5) There were many other instances in which the individual, credited by Graham as giving Graham certain information which was included in the article, [fol. 92] categorically denied under oath that any such information had been furnished.

Frank Graham, Jr., author of the article, and Charles Davis Thomas, the Managing Editor of the *Saturday Evening Post*, testified by deposition that they both knew that after the article was published plaintiff Butts' career would be ruined. The author of the article, Frank Graham, Jr., testified by deposition at the trial. Curtis' Editor-in-Chief, Clay Blair, Jr., and its Senior Editor, Davis Thomas, were present in court but testified by deposition. Furman Bisher, of Atlanta, who was paid to assist in the preparation of the article, testified by deposition.

The article was clearly defamatory and extremely so. The *Saturday Evening Post* had a circulation in excess of 6 million copies per issue. It claims readers of 22 million. Butts was unquestionably one of the leading figures in the national football picture. The jury was warranted in concluding from the foregoing incidents and the persistent and continuing attitude of the officers and agents of the defendant that there was a wanton or reckless indifference of plaintiff's rights. The guilt of the defendant was so clearly established by the evidence in the case so as to have left the jury no choice but to find the defendant liable.

This Court does not feel that the award of \$60,000.00 for actual damages was excessive. The evidence showed plain-

tiff to be a man in his fifties, and that his earnings from his profession had been a minimum of \$12,000.00 per annum.

The Court must now consider the amount of punitive damages awarded. What is the nature of punitive damages [fol. 93] and for what purpose do we allow their imposition? The law of Georgia provides that in every tort there may be aggravating circumstances, either in the act or the intention, and in that event the jury may give additional damages to deter the wrongdoers from repeating the trespass. Sec. 105-2002, Georgia Code Annotated, 1933.

This Court, however, is greatly concerned with the size of the verdict as to punitive damages. An examination has been made of many cases and the awards made throughout the several jurisdictions of the United States, both in the Federal and State Courts. As far as this Court can ascertain, the largest award ever sustained for punitive damages by the Appellate Courts was an award of \$175,000.00 in the case of *Reynolds v. Pegler*, 123 F. Supp. 36, 223 F. 2d 429. Since the award in the case at hand, the New York Supreme Court, Appellate Division, October Term, in the case of *Faulk v. Aware, Inc., and Hartnett*, has reduced the award of punitive damages in the amount of \$2,500,000.00 to \$150,000.00. The award for punitive damages in the case under consideration is more than seventeen times larger than the highest award for punitive damages ever sustained. *Reynolds v. Pegler*, supra.

True, fixing the amount of damages is primarily in the province of the jury, and it has been said, with respect to libel cases, "the jury is generally considered to be the Supreme arbiter on the question of damages". *Lynch v. New York Times Company*, 171 A.D. 399, 401. The Court, if possible, should try to avoid invading that field. However, a Court may not stand by idly when it is apparent that a verdict is excessive. In *Sunray Oil Corporation v. Allbritton*, 188 F. 2d 751 (5 Cir. 1951), Judge Hutcheson emphasized that a district judge has a duty to grant a new

[fol. 94] trial, not only when the jury's verdict is excessive as a matter of law, but also where "it is larger in amount than the judge thinks it justly ought to be". Thus, he said:

"Whether, in the opinion of the district judge, a verdict is excessive as a matter of fact, that is, though not contrary to right reason and, therefore not excessive as a matter of law, it is larger in amount than the judge thinks it justly ought to be, or is excessive as a matter of law, that is, is so monstrous or inordinate in amount as to find no support in right reason, he has the same power, the same duty, in the one case as in the other to relieve against the excessiveness by granting a new trial or requiring a remittitur in lieu."

As was held by the late Judge Parker in the case of *Virginian Railway Company v. Armentrout*, 166 F. 2d 400, 408:

"The power and duty of the trial judge to set aside the verdict under such circumstances is well established, the exercise of the power being regarded as not in derogation of the right of trial by jury but one of the historic safeguards of that right. * * *

"To the federal trial judge, the law gives ample power to see that justice is done in causes pending before him; and the responsibility attendant upon such power is his in full measure. While according due respect to the findings of the jury, he should not hesitate to set aside their verdict and grant a new trial in any case where the ends of justice so require."

[fol. 95] In accordance with the cases cited above, this Court feels it is its duty to keep a verdict for punitive damages within reasonable bounds considering the purpose to be achieved as well as the corporate defendant's wanton or reckless indifference to the plaintiff's rights. In observance of such duty, this Court concludes that the award for puni-

tive damages in this case was grossly excessive. It is the Court's considered opinion that the maximum sum for punitive damages that should have been awarded against Curtis Publishing Company should be \$400,000.00.

Movant's Grounds 2, 3, and 4 assert that the right given by Section 105-2002, Georgia Code Annotated, 1933, to a jury to grant punitive damages violates the rights guaranteed by the Federal Constitution to freedom of speech and press and to substantive and procedural due process. These contentions are without merit. However, these constitutional questions are raised for the first time by this motion. No constitutional question concerning the statute was ever raised by movant's pleadings. The contention that a State statute is unconstitutional is an affirmative defense and must be so pleaded in defendant's answer. *Kewanee Oil & Gas Company v. Mosshamer*, 58 F. 2d 711, 712; *White Cleaners and Dyers v. Hughes*, 7 F. Supp. 1017 (D.C. La. 1934, 3 judges).

Movant's Ground 5 has been expressly withdrawn by defendant.

Grounds 6 through 13 of defendant's motion contend that error was committed in excluding certain evidence as to specific acts of misconduct by plaintiff, defendant contending that this evidence should have been permitted for the purpose of impeachment and in mitigation of damages. The [fol. 96] first consideration is Section 38-202, Georgia Code Annotated, 1933, which provides as follows:

"The general character of the parties, and especially their conduct in other transactions, are irrelevant matter, unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct."

The defendant contends that under Rule 43(a) of the Federal Rules of Civil Procedure, this evidence is admissible in Federal Court. Rule 43(a) provides that in de-

termining admissibility of evidence whether there is a conflict between the State and the Federal rule, the plaintiff is entitled to the benefit of the more favorable rule. *Hambrice v. F. W. Woolworth Company*, 290 F. 2d 557.

However, on the question with which this Court is concerned and without passing upon the question as to whether the matter is substantive or procedural, it appears that there is no conflict between the Georgia rule and the Federal rule as to the admissibility of the specific acts of misconduct on the part of the plaintiff.

Under the decision of *Cox v. Strickland*, 101 Ga. 482, it is held that the filing of a plea of justification in defense to an action of libel put the plaintiff's character in issue, and a defendant has a right to show that the plaintiff's general character is bad, but cannot, in so doing, go into the proof of specific acts or resort to general rumors by hearsay.

Neither under the majority of federal decisions which this Court has studied would such tests be admissible. See [fol. 97] *Tribune Association v. Follwell*, 107 F. 646; *Sun Printing & Publishing Association v. Schenck*, 98 F. 925; *Morning Journal Association v. Duke*, 128 F. 657.

As was said in the *Schenck* case, *supra*:

"It is not a defense to a libel or slander that the plaintiff has been guilty of offenses other than those imputed to him, or of offenses of a similar character; and such facts are not competent in mitigation of damages. The only tendency of such proof is to show, not that the plaintiff's reputation is bad, but that it ought to be bad."

As further authority sustaining the inadmissibility of such evidence, see *Wigmore on Evidence*, 3d Edition, Section 209, where it is stated that the reputed character of the plaintiff in an action of defamation is admissible in mitigation of damages so long as proof of character is made

by reputation only; but particular acts of misconduct are irrelevant and such evidence is universally regarded as improper. Pertinent to this issue is the statement of Richards, C. B., in the case of *Jones v. Stevens*, 11 Price 235, 265:

"I cannot . . . allow defendants to impeach all the transactions of a man's life who may have occasion to seek redress in courts of justice and throw on him the difficulty of showing a uniform propriety of conduct during all his existence. It would be impossible for any man to come prepared to meet such a charge."

[fol. 98] Movant contends that this Court erred in refusing to charge Section 38-1806 of the 1933 Georgia Code Annotated. There was no showing that any witness wilfully and knowingly testified falsely, and this Court charged generally on the subject of impeachment. See *Smaha v. George*, 195 Ga. 412.

Ground 15 of defendant's motion is without merit. Ground 16 of movant's motion is without merit. See *Smaha v. George*, supra; and *Branan v. LaGrange Truck Lines, Inc.*, 94 Ga. App. 829.

Grounds 17 and 18 of defendant's motion contend error in excluding evidence tending to impeach witness John Carmichael. Such evidence was offered by defendant to show that witness Carmichael had been convicted in 1933 while witness was a minor in Ohio. The Court, in its discretion, refused to admit such evidence because of the lapse of time. See *Goddard v. United States*, 131 F. 2d 220; *Sinclair Refining Company v. Southern Coast Corporation*, 195 F. 2d 626.

The alleged false statements for the purpose of obtaining licenses were inadmissible. A witness cannot be impeached by proving contradictory statements previously made by him as to matters not relevant to his testimony and to the case. *Grant v. Hart*, 197 Ga. 662; *Haynes v. Phillips*, 67 Ga.

App. 574. Both grounds 17 and 18 of the defendant's motion are without merit.

Grounds 19, 20, and 21 do not merit the granting of a motion for a new trial on any of the grounds as set forth. [fol. 99] Ground 22 of defendant's motion for a new trial asserts error because of arguments of plaintiff's counsel in the closing remarks to the jury. No objection nor complaint was ever raised to any portion of plaintiff's counsel's argument to the jury, although separate arguments were made by counsel for both parties on separate days of the trial.

Arguments were begun on Friday by both counsel and completed on Monday. Much of the argument of which complaint is now made was offered on Friday, and yet on the following Monday, no objection was raised on this portion of counsel's summation. Counsel for defendant consisted of numerous counsel, and yet exception was only made on the filing of this motion. It is an elementary principle of federal law that a new trial will not be granted where a party seeks to raise for the first time, on a motion for a new trial, that opposing counsel was guilty of misconduct in his argument to the jury, where such conduct was not excepted to during the trial. See *Travelers Insurance Company v. Bell*, 5 Cir. 1951, 188 F. 2d 725; *Thomson v. Boles*, 123 F. 2d 487; *Hobart v. O'Brien*, 243 F. 2d 735; *Uhl v. Echols Transfer Company*, 5 Cir. 1956, 238 F. 2d 760. For the reasons stated above, Ground 22 of defendant's motion is without merit.

Grounds 23 (a) (b) (c) (d) and (e) of defendant's motion for a new trial complained of errors in the Court's instructions to the jury. The instructions complained of in these grounds of defendant's motion were not objected to at the trial of the case. Rule 51 of the Federal Rules of Civil Procedure provides in part as follows:

"No party may assign as error the giving or the failure to give an instruction unless he objects thereto

[fol. 100] before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

Opportunity was afforded counsel for defendant to make such objections before the jury was permitted to consider its verdict. Under the above-cited rule, the defendant may not now complain. See also *Pruett v. Marshall*, 5 Cir. 1960, 283 F. 2d 436; *Williams v. National Surety Corporation*, 5 Cir. 1958, 257 F. 2d 771; *Moore v. Louisville & Nashville Railroad Company, Inc.*, 5 Cir. 1955, 223 F. 2d 214.

Defendant's contention based on Ground 24 of the defendant's motion for a new trial is without merit for the reasons stated in this Court's ruling on defendant's motion for a judgment notwithstanding the verdict this day filed with the Clerk of the Court.

All the grounds set out in defendant's motion for a new trial, excepting Ground 1, are denied for the reasons stated above.

As to the first ground of the defendant's motion for a new trial, a federal trial court has authority to determine whether a verdict is excessive and to grant either a new trial or to require a remittitur. *State Farm Mutual Automobile Insurance Company v. Scott*, 5 Cir. 1962, 198 F. 2d 152.

An order in compliance with this opinion will be filed this date.

[fol. 101] This the 14th day of January, 1964.

Lewis R. Morgan, United States District Judge.

IN UNITED STATES DISTRICT COURT

ORDER—Filed January 14, 1964

Now, this the 14th day of January, 1964, It Is Ordered that the motion of the defendant, Curtis Publishing Company, for a new trial is granted unless the plaintiff, Wallace Butts, within twenty (20) days after the service of this order, shall, in a writing filed with the Clerk of the United States District Court for the Northern District of Georgia, remit all the punitive damages awarded above the sum of \$400,000.00; the award for general damages in the amount of \$60,000.00 to remain undisturbed.

Lewis R. Morgan, United States District Judge.

[fol. 102]

IN UNITED STATES DISTRICT COURT

AMENDMENT TO ORDER ON MOTION FOR NEW TRIAL—

Filed January 15, 1964

The order on the motion for a new trial in the above-named case having been filed on January 14, 1964, this Court hereby amends said order by adding to the third paragraph on Page 14 of said original order the following words: "including Ground 14 of said motion, which ground has no merit", so that said paragraph, when amended, shall read as follows:

"All of the grounds set out in defendant's motion for a new trial, excepting Ground 1, are denied for the reasons stated above, including Ground 14 of said motion, which ground has no merit."

This the 15th day of January, 1964.

Lewis R. Morgan, United States District Judge.

[fol. 103]

IN UNITED STATES DISTRICT COURT

CONSENT OF WALLACE BUTTS TO REMIT—

Filed January 20, 1964

An order having been entered by this Honorable Court dated January 14, 1964, granting the motion of the defendant, Curtis Publishing Company, for a new trial unless the plaintiff, Wallace Butts, within twenty (20) days from the date thereof, shall, in a writing filed with the Clerk of this Court, remit all the punitive damages awarded above the sum of \$400,000.00; the award for general damages in the amount of \$60,000.00 to remain undisturbed;

Now comes the plaintiff, Wallace Butts, and after grave deliberation, having neither the financial nor the physical resources available to conduct a second trial of this case, and standing to gain nothing thereby in the present posture of the case, regretfully, but with great respect for this Honorable Court, accedes to the Court's said order and remits all punitive damages awarded above the sum of \$400,000.00, leaving a net total recovery in favor of plaintiff in the amount of \$460,000.00.

This 20th day of January, 1964.

Wallace Butts, Plaintiff.

[fol. 104] William H. Schroder, Allen E. Lockerman, T. M. Smith, Jr.

Of Counsel:

Troutman, Sams, Schroder & Lockerman, 1605 William-Oliver Building, Atlanta 3, Georgia, Attorneys for Plaintiff, Wallace Butts.

Service acknowledged January 20, 1964. EAB.

Jeff Davis, Sr., Attorney for Defendant.

Of Counsel:

Kilpatrick, Cody, Rogers, McClatchey & Regenstein.

[fol. 105]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WALLACE BUTTS, Plaintiff,

versus Civil Action No. 8311

CURTIS PUBLISHING COMPANY, Defendant.

JUDGMENT—January 22, 1964

The plaintiff, having filed with the Clerk of this Court a writing remitting all of the punitive damages awarded above the sum of \$400,000, which writing was in accordance with the Order of this Court dated January 14, 1964, the defendant's Motion for New Trial is hereby overruled.

The judgment for the plaintiff for \$3,060,000 entered on August 20, 1963, is hereby set aside and

It Is Hereby Ordered and Adjudged that the plaintiff, Wallace Butts, recover of the defendant, Curtis Publishing Company, the sum of \$460,000, with interest as provided by law.

Dated this 22nd day of January, 1964.

Lewis R. Morgan, United States District Judge.

[fol. 106]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION
Civil Action No. 8311

[Title omitted]

NOTICE OF APPEAL—Filed January 24, 1964

Notice is hereby given that Curtis Publishing Company, the defendant above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on January 22, 1964.

Welborn B. Cody, Attorney for Defendant.

Of Counsel:

Kilpatrick, Cody, Rogers, McClatchey & Regenstein,
1045 Hurt Building, Atlanta, Georgia 30303, Jackson
2-7420.

[fol. 107]

IN UNITED STATES DISTRICT COURT

NOTICE OF PLAINTIFF'S CROSS APPEAL—
Filed January 30, 1964

The jury's verdict in this case of \$3,000,000.00 punitive damages and \$60,000.00 general damages for the plaintiff was entered as the judgment of the district court by order dated August 20, 1963. By order entered January 13, 1964 on defendant's motion for new trial the district court ruled that the punitive damages awarded plaintiff by the jury was excessive and that a new trial would be granted defendant unless plaintiff, within 20 days, remitted in writing filed with the Clerk all the punitive damages awarded above the sum of \$400,000.00, leaving the \$60,000.00 for general damages undisturbed.

Plaintiff, Wallace Butts, having neither the financial nor physical resources to conduct a second trial and faced with either remitting \$2,600,000.00 of the punitive damages or having a new trial granted, yielded to the mandate of the district court and remitted in writing, filed with the clerk January 20, 1964 all punitive damages awarded by the jury above the sum of \$400,000.00. Thereafter, on January 22, 1964 the district court set aside the judgment for plaintiff for \$3,060,000.00 entered on August 20, 1963 and substituted in lieu thereof judgment for the plaintiff against the defendant in the sum of \$460,000.00.

From said judgment of the District Court the defendant Curtis Publishing Company filed its notice of appeal in the Clerk's office on January 24, 1964, thereby recording its intention to refuse to accept the District Court's \$2,600,000.00 reduction.

[fol. 108] Feeling that the sword should cut both ways, and in order that the action of the District Court in requiring plaintiff to consent to a reduction of the verdict in the amount of \$2,600,000.00 as a condition to the denial of defendant's motion for new trial may be reviewed, notice is hereby given that Wallace Butts, plaintiff in the above entitled action, hereby cross-appeals to the United States Court of Appeals for the Fifth Circuit from that part of the order of the District Court entered in this cause on January 22, 1964 which set aside the judgment for plaintiff in the amount of \$3,060,000.00 entered August 20, 1963 and substituted in lieu thereof judgment for plaintiff in the amount of \$460,000.00, and gives notice of his intention to ask the Circuit Court of Appeals to restore the original award or in the alternative, to fix an amount in excess of that established by the trial court which would be fair and reasonable under the facts of the case.

William H. Schroder, Allen E. Lockerman, T. M. Smith.

Of Counsel:

Troutman, Sams, Schroder & Lockerman, 1605 William-Oliver Building, Atlanta 3, Georgia.

[fol. 109]

IN UNITED STATES DISTRICT COURT

NOTICE OF AMENDMENT OF PLAINTIFF'S CROSS APPEAL—
Filed February 24, 1964

Wallace Butts, plaintiff in the above entitled action, heretofore filed in this Court under date of January 30, 1964 his notice of plaintiff's cross appeal to the judgment of the district court dated January 22, 1964 in order that the action of the district court in requiring plaintiff to consent to a reduction of \$2,600,000 of the jury's verdict as a condition to the denial of defendant's motion for new trial may be reviewed by the United States Court of Appeals for the Fifth Circuit in connection with the defendant's appeal to said Court from the district court's judgment of January 22, 1964.

Now comes Wallace Butts the said plaintiff in the above entitled action and within thirty (30) days from the date of the district court's judgment of January 22, 1964 gives notice of this his amendment to his said notice of cross appeal, for consideration and review by the United States Court of Appeals for the Fifth Circuit of the pretrial ruling of the district court as made by said court on July 29, 1963 that the second defense of the defendant, Curtis Publishing Company, as set out in its answer to plaintiff's complaint, was a valid plea of justification. A consideration and review of said ruling of the district court regarding the defendant's alleged plea of justification is sought by plaintiff only in the event the decision of the United States Court of Appeals for the Fifth Circuit reverses the judgment of the district court and sends the case back for a new trial; [fol. 110] otherwise, a review and consideration of the district court's said ruling regarding the defendant's alleged plea of justification is not sought.

William H. Schroder, Allen E. Lockerman, T. M. Smith, Jr., Attorneys for Plaintiff.

Of Counsel: Troutman, Sams, Schroder & Lockerman,
1605 William-Oliver Building, Atlanta, Georgia 30303.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S REQUESTED INSTRUCTIONS TO JURY

Defendant's Request to Charge No. 3

Wallace Butts v. Curtis Publishing Company, Case No. 8311 George Code Section 38-1806, which is as follows:

"38-1806. (5884) WHAT CREDIT TO IMPEACHED WITNESS; QUESTION FOR JURY.—When a witness shall be successfully contradicted as to a material matter, his credit as to other matters shall be for the jury, but if a witness shall swear wilfully and knowingly falsely, his testimony shall be disregarded entirely, unless corroborated [fol. 111] by circumstances or other unimpeached evidence. The credit to be given his testimony where impeached for general bad character or for contradictory statements out of court shall be for the jury to determine. (59 Ga. 63; 93 Ga. 488 (21 S.E. 66); 722 Ga. 254.)"

Defendant's Request to Charge No. 6

Wallace Butts v. Curtis Publishing Company,
Case No. 8311

Whenever a party presents himself as a witness and his evidence is contradictory, vague or equivocal, his testimony must be construed most strongly against him.

Defendant's Request to Charge No. 8

Wallace Butts v. Curtis Publishing Company,
Case No. 8311

In order to establish the defense of truth the defendant must establish the substantial truth of the charge which is made in the article. However, the defendant need not prove the truth of any statements contained in the article which

are made about someone other than the plaintiff nor need the defendant prove the truth of any statements in the article about him which are not a part of the libelous charge. Therefore, in determining whether or not the defense of truth has been established, you will disregard any inaccurate statements contained in the article which are not about the plaintiff, or which are about the plaintiff but are not a part of the libelous charge.

Ga. Code Ann. §105-701

[fol. 112] Defendant's Request to Charge No. 14:

Wallace Butts v. Curtis Publishing Company,
Case No. 8311

You cannot award plaintiff punitive damages unless plaintiff has sustained his burden of persuading you by a fair preponderance of the evidence that defendant acted with actual malice in publishing the charge made of plaintiff in the Post article.

Restatement of Torts, ¶908, comment (b) (1938)

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S REQUESTED INSTRUCTIONS TO JURY—
Filed February 7, 1964

Plaintiff requests the Court to give to the jury the following instruction:

• • • • •

5.

I instruct you that when read in its entirety, the court construes the article complained of in the Saturday Evening Post as charging plaintiff as being corrupt and with rigging and fixing the 1962 Alabama-Georgia football game, which statements tend to injure the plaintiff in his trade,

occupation or business. I, therefore, charge you that the article complained of is libelous per se, that is, libelous on its face as a matter of law. I further charge you that, if the defendant does not prove the truth of said charges to your [fol. 113] satisfaction by a legal preponderance of the evidence, you must return a verdict for the plaintiff in the amount of damages to which, under all the circumstances shown by the evidence, you find he is entitled.

* * * * *

13.

In addition to seeking general damages, the plaintiff is also seeking to recover \$5,000,000 as punitive damages to deter Curtis Publishing Co. from repeating the alleged injury to his honor, reputation and integrity in the future. I charge you that under the law of Georgia, there may be aggravating circumstances in every tort, either in the act or in the intention of the defendant. If you find the defendant has failed to prove the truth of the article and if you also find that there are such aggravating circumstances, then you would be authorized to award to the plaintiff, in addition to such such as you may award for general damages, if any, additional damages to deter the defendant from repeating the trespass to the plaintiff.

Ga. Code Ann. § 105-2002 (1956 Rev.)

14.

On the question of punitive damages, as on the question of general damages, the law prescribes no set way in which such damages shall be computed. You should bear in mind that the purpose of such punitive damages is to deter a defendant from repeating the alleged wrong to the plaintiff. You would be authorized to consider in this connection the wealth of the defendant, if such fact appears from the evidence. You may also consider whether or not the defendant has sustained the burden of proving its claim that the statements made of and concerning the plaintiff

were truthful, and if you find that the defendant has not sustained that burden, then you are authorized to consider this an aggravating circumstance.

I further charge you that actual malice is an aggravating circumstance, and upon proof thereof, punitive damages may be awarded to deter the wrongdoer.

Richardson v. Roberts, 23 Ga. 215 (5) (6) (1857);
Atlanta Journal v. Doyal, 82 Ga. App. 321, 331, 60
 S.E. 2nd 802 (1950).

IN UNITED STATES DISTRICT COURT

PRE-TRIALS AND TRIALS—RULE 10—Filed February 22, 1962

(●) Preliminary pre-trial orders may be entered from time to time, including the time of hearing of motions. No civil case shall be tried however, until a final pre-trial order has been entered by the Court defining the issues to be tried and embracing (by reference or otherwise) all previous preliminary pre-trial orders.

(b) Plaintiff's counsel shall complete all discovery desired within a period of four months after answer is filed or shall apply to the Court for an extension of such time. When discovery is completed and the case ready for [fol.115] trial plaintiff's counsel shall so certify to the Court and the case (if not already assigned for pre-trial by the Court) will be set down for pre-trial hearing.

(c) At a time not less than fifteen days prior to the date set for pre-trial hearing, plaintiff's counsel must have a pre-trial conference with opposing counsel; at which all of the terms of a final pre-trial order shall be discussed and, within ten days following said conference, plaintiff's counsel shall file with the Court a proposed pre-trial order covering all matters referred to in this Local Rule of Court, the appendix attached thereto, and as further ordered by the Court. Upon request by either party the Court will cause

such preliminary pre-trial conference between counsel to be held at the court house at a time fixed by the Court, at which time a partial or a complete pre-trial order may then be entered. Stipulations may be made by counsel subject to be withdrawn by a time certain, and any stipulation made by counsel will, upon good cause shown to the Court, be permitted to be withdrawn.

(d) The proposed pre-trial order prepared by counsel and submitted to the Court at the time of pre-trial hearing, or prior thereto, shall include among other things the following:

All motions filed but not disposed of; all questions regarding jurisdiction of the Court; whether the appointment of a special master should be made; qualification of the jury and the number of jurors required; documentary evidence to be introduced by each party and objections thereto; amendments to the pleadings; the matter of witnesses; depositions to be put in evidence and objections thereto; citation of authorities by any party regarding evidence, [fol. 116] procedural or substantive law; estimated length of trial and request for special assignments; efforts by counsel to settle the case; form of the verdict and separation of issues for trial.

(e) In negligence suits such other matters shall be covered as contained in appendix to this Rule and by Orders of Court.

(f) The pretrial hearing shall be attended by attorneys who will actually try the case or, upon approval by the court, by some other attorney of record who is authorized to define the issues and to make stipulations. Non-resident counsel may request of the Court a special assignment for pre-trial hearing.

(g) The final pre-trial order shall be made pursuant to Rule 16 of the Federal Rules of Civil Procedure, to Rule 44½ of the Admiralty Rules, to Orders of the Court, and to Local Rules of the Court and all amendments thereto.

(h) The case shall be tried pursuant to such pre-trial order and unless otherwise directed by the Court, no issues in behalf of the plaintiff or defendant will be considered on the trial unless contained in said pre-trial order, but, upon motion timely made by either party the terms of the pre-trial order will be amended in the interest of justice.

(i) The final pre-trial order shall make reference to the charge of the Court to be given on the trial of the case, in so far as the same may be considered at that stage of the case. Requests to charge however, shall be prepared in triplicate by counsel, each request on a separate sheet of [fol. 117] paper and numbered serially, and one copy shall be delivered to the Court and one copy served on opposing counsel at or before the time of opening of the trial, together with citation of authorities in connection therewith.

Approved effective January 9, 1962:

Frank A. Hooper, United States District Judge, Boyd Sloan, United States District Judge, Lewis R. Morgan, United States District Judge.

A True Certified Copy, February 13, 1964.

B. G. Nash, Clerk, /s/ Sammy Godsey, Deputy Clerk.

(Seal)

[fol. 118]

IN UNITED STATES DISTRICT COURT

DEPOSITION OF WALLACE BUTTS—Taken May 3, 1963

Deposition of Wallace Butts, plaintiff, taken by defendant pursuant to the federal Rules of Civil Procedure, pursuant to agreement of counsel, before Walter M. Pratt, Notary Public, at 1607 William-Oliver Building, Atlanta, Georgia, on Friday, May 3, 1963, commencing at 9:30 o'clock a.m.

• • • • • • •

Q. I asked you in the early part of this deposition if you knew a man by the name of E. C. Lindsey and I believe I recall your answer was that you did not.

A. No. I know no man named E. C. Lindsey.

Q. Do you know any person that goes by the name of E. C. Lindsey?

A. Nobody that goes by that name.

IN UNITED STATES DISTRICT COURT

CONTINUATION OF THE DEPOSITION OF
WALLACE BUTTS—Taken July 16, 1963

Continuation of the Deposition of Wallace Butts, plaintiff, taken by defendant pursuant to the Federal Rules of Civil Procedure, pursuant to agreement of counsel, before [fol. 119] Carl F. Potswald, Notary Public, at 1607 William-Oliver Building, Atlanta, Georgia, on Tuesday, July 16, 1963, commencing at 10:00 o'clock a.m.

Q. Concerning the Pontiac convertible automobile which you purchased in July 1961 from Boomershine Motors, do you have that car now?

A. No.

Q. What happened to it?

A. The car is owned by another person.

Q. Who is the person that owns it?

A. Evelyn Lindsey.

Q. Did she buy it from you?

A. No.

Q. Did you give it to her?

A. I gave her part of it.

Q. What part of it did you give to her?

A. Mr. Cody, the best way I can answer this is to tell you that she had a Buick which was traded in on the deal.

Q. And did she turn the Buick in and get credit on the purchase price, was that credited on the purchase price when you bought the car from Boomershine?

A. No, sir.

Q. Did she turn the Buick over to you?

A. She gave me the cash from the sale of the Buick.

Q. Do you recall how much cash was involved in the sale of the Buick?

A. I think, sir, it was \$900.

Q. Did you pay for the balance of the car you bought from Boomershine?

A. Yes, sir.

• • • • •

[fol. 120]

IN UNITED STATES DISTRICT COURT

PRE-TRIAL CONFERENCE—July 8, 1963

Mr. Schroder: Well, Your Honor, the direct—wait a minute, that is going to bring up another thing. We are going to—whether this answer that has been filed is a plea—really a plea of justification or is a joinder of the general issue, that will determine who goes first. If it is a plea of justification, which I don't think it is, but if it is and is so construed by the Court, I think the defendant has admitted a prima facie case; it is up to him to grab the ball and travel from there.

The Court: I thought we had been over that.

Mr. Schroder: We discussed it in your office at one time when it came up, you know; we were there discussing something else, and there was—

The Court: You mean by justification, the truth, of course?

Mr. Schroder: I am talking about a plea of justification as that term is used in Georgia law and in general law.

The Court: Well, that means they are pleading that it was true.

Mr. Schroder: No—well, yes, sir. In order to plea—enter [fol. 121] a plea of justification, they have to, in effect, admit a prima facie case. Now, a plea of truth is entirely different. That joins the issue. But the burden is still on me. A plea of justification, they admit, number one, that they published an article—

The Court: Yes, sir.

Mr. Schroder: —which was—with malice, which defamed my client and which was false. They have admitted in a plea of justification the complaint and everything in the complaint and every innuendo and insinuation that the complaint says was complained of in that article.

The Court: I don't think they admitted everything in your complaint. I think the substance of their answer is that they say that the article which they published is true.

Mr. Schroder: But that is—that is not a plea of justification, though. Now, I am prepared to argue and I am prepared to submit a memorandum on it, because I know I am on sound ground.

There is a real big difference between a plea of justification and a plea of truth.

The Court: His second defense filed is that the Defendant avers that the statements in the article complained of, which are of and concerning the plaintiff, are true.

[fol. 122] Mr. Schroder: Yes, sir; that is a simple plea of truth.

The Court: Yes, sir.

Mr. Schroder: That joins the issue. I say it is false; he says it is true.

The Court: Yes, sir.

Mr. Schroder: The burden is still on me to prove it is false.

The Court: You mean the allegations in the article?

Mr. Schroder: The burden is on me to prove the allegations of my petition.

The Court: Yes, sir.

Mr. Schroder: Now, that is one thing. But, now, if, as we were talking about the other day, if, in effect, this is a

plea of justification, it admits everything I have said in my complaint, and I have got authorities to substantiate it. He admits a prima facie case, and he proceeds then with the burden of proof, so he puts up his case.

Let me give Your Honor the benefit of just a few authorities on this.

[fol. 123] The Court: All right, sir.

Mr. Cody: This is as plain a plea of justification as can be filed, and that is that they published this article and they state that the article is true, and—

The Court: Mr. Cody, I think this is a plea of justification. If it is not, I will let somebody else correct it, but that is all I can see.

Mr. Smith: Our basic problem is, we think there is a difference between a plea of truth and a plea of justification, and they say it is one and the same.

The Court: I think it is one and the same.

Mr. Smith: Well, that is it; that is it.

The Court: All right, sir. I stand to be corrected.

Mr. Schroder: Well, don't let the record indicate that we have agreed.

[fol. 124] The Court: No; I am not.

IN UNITED STATES DISTRICT COURT

PRE-TRIAL CONFERENCE—July 8, 1963

Mr. Cody: There is no limitation on Cross-examination.

Mr. Schroder: I think there is a Code section on that.

The Court: That is the reason I was bringing it up. I am in doubt.

Mr. Schroder: 38-202; "The general character of the parties, and especially their conduct in other transactions, are irrelevant matters, unless the nature of the case involves

such character—" that is not the one I was talking about. 1804, I believe it is.

The Court: Code Section 13-1804? That's right.

Mr. Schroder: That is the one. I don't see where I have gotten it written down.

The Court: "Where witness called by defendant testifies to his good character from general reputation, it is allowable, on cross-examination, for witness to testify to his having heard of specific instances of conduct tending to disprove witness' estimate of defendant's character."

Likewise, you could—

Mr. Cody: That is 1804 you are reading from?

Mr. Schroder: That is 1804?

The Court: Yes, sir; and that is the case—the case is 70 Georgia Appeals 431. "Where witness called by defendant testifies to his good character from general reputation, it is allowable, on cross-examination, for witness to testify to his having heard of specific instances of conduct tending to disprove the witness' estimate of defendant's character." So, likewise, I am assuming—say you put up his bad character, if such. Could Mr. Cody—likewise, would Mr. Schroder be—would it be admissible for Mr. Schroder to question him about acts of good character? I am just guessing.

Mr. Schroder: I would think it would go both ways. Had you known so and so, or have you heard so and so.

Mr. Cody: Oh, yes; you get into hearsay which is inadmissible.

Mr. Schroder: That is what the section says.

[fol. 126] Mr. Cody: Yes; both ways. And by the same token I have that same right of cross-examination when we get into that field if he puts up evidence of good character.

The Court: That is another point that has been bothering me.

Mr. Schroder: We come back to an unfortunate play of words in these decisions, because what we are talking about in a libel suit—

The Court: Is good character.

Mr. Schroder: No; is not the damage to a man's character

but damage to his reputation, and that is entirely different from his character. A character is what he is; and reputation is what other people think he is.

The Court: Well, say reputation. Couldn't you question him in regard, didn't he do so and so? Did you know he contributed so much to the Boys' Club?

Mr. Schroder: Had you known that, would that affect your estimate as to his reputation?

The Court: That's right.

[fol. 127] Mr. Schroder: I think it works both ways, although I admit I am not—I don't have any—

The Court: I have read some of these Georgia cases on that.

Mr. Cody: I think Cox against Strickland in 101 Georgia answers pretty well that problem.

Mr. Schroder: Yes; that is a leading case; no question about it.

The Court: What does it say? I have read Cox vs. Strickland, but not on that.

Mr. Cody: Plaintiff, under the general rule, has the right on cross-examination of going into special facts to ascertain the nature and extent of the knowledge of the witness. Where a plaintiff's character is in issue, he has a right to sustain it by proof of his general character if he can.

The Court: Yes, sir.

Mr. Cody: Now, that covers both sides of it.

The Court: All right. Suppose he puts Coach Butts on the stand. You would not be permitted to ask him any questions in regard to specific acts, would you?

[fol. 128] Mr. Cody: Oh, yes.

Mr. Schroder: I doubt that.

Mr. Cody: You are getting into another field now.

The Court: No, sir.

Mr. Schroder: No, sir; that is the same field.

The Court: That is the same field.

Mr. Cody: On the question of reputation and character, yes; I will answer it as to character; yes.

Mr. Joiner: Your Honor, isn't that Code Section now

confined by the very words of it to cross-examination of witnesses who testify as to the character of other witnesses for the purpose of impeaching the witnesses, and not—

The Court: Here is the first sentence in that Code Section.

“A witness may be impeached by evidence as to his general bad character.” I assume that Coach Butts will go on the stand.

[fol. 129] Mr. Schroder: (Nods head in affirmative.)

The Court: Can the defendant attempt to impeach Coach Butts by evidence of immoral acts or something?

Mr. Cody: On the subject of impeachment, you are getting into a different field. We were not talking about impeachment of a witness when you first raised this point. You were talking about cross-examination of a witness who testified as to good character.

The Court: Yes, sir.

Mr. Cody: That is a different point.

The Court: Well, both of those points I want to raise.

Mr. Lockerman: Let's do talk about the ones you raised, whether or not he can go into specific acts if Butts is put on the stand.

The Court: Or if any witness is put on the stand.

Mr. Cody: I don't think a party can testify as to his own good reputation.

[fol. 130] Mr. Lockerman: I don't either.

The Court: I didn't mean that. Suppose we have got character witnesses on both sides.

Mr. Cody: Yes, sir.

The Court: You would be permitted to question the witnesses about the good character in regard to certain specific acts: had you known this, would your opinion still be the same?

Mr. Cody: Right, right. He has the same privilege with respect to any witness that I put on the stand that would testify to the bad character.

Mr. Lockerman: You could only ask him the general questions as to reputation, the witnesses you put on.

The Court: Have you known Coach Butts? How long

have you known him? Do you know his general character and reputation in the community in which he lives? Is it good or bad? Right there he stops.

Mr. Schroder: No, no. Would you believe him under oath?

The Court: We are talking about reputation now.

[fol. 131] Mr. Schroder: That is what I am talking about.

Mr. Cody: No; you are behind.

Mr. Lockerman: And he stops right there.

The Court: That's right.

Mr. Lockerman: Now, if they testified that his reputation was bad—

The Court: Bad.

Mr. Lockerman: —he can't go into any specific acts.

The Court: That's right.

Mr. Lockerman: Now, we, on the other hand, in cross-examining him, assuming that we did cross-examine him, we could ask him if he knew about good deeds.

The Court: Philanthropic deeds, and enumerate them.

[fol. 132] Mr. Lockerman: That's right. After he testified to that, assuming that he would, whether he did or did not, whether it would make any difference in his opinion as to his reputation. Of course, Mr. Cody cannot go back into this.

The Court: That ends that.

Mr. Lockerman: That ends that.

The Court: That's right; that is his reputation.

Mr. Lockerman: That's right. Now, if, in the testimony of Butts when he is put on the stand and under cross-examination by Mr. Cody—

The Court: Yes, sir.

Mr. Lockerman: —can Mr. Cody ask Mr. Butts anything about specific acts of conduct on his part?

The Court: Now, that is getting into—

Mr. Schroder: Getting into the guts of it.

[fol. 133] The Court: That is getting into the character of it, as to his veracity as a witness.

Mr. Strubing: That's right.

Mr. Cody: That's right. You are getting away from character now.

Mr. Schroder: After all, the Georgia Code Section says that libel is an injury not to character but a libel is an injury to reputation. There is a difference.

The Court: Yes, sir; but what I am driving at, suppose the defendant, in an effort to impeach his character as to his veracity and so forth, can he be asked specific acts?

Mr. Schroder: No more so than we could other witnesses, I don't think. Somewhere there ought to be some authority.

Mr. Cody: There is plenty of it.

Mr. Schroder: Let's have it.

Mr. Cody: 130 Federal, page 24.

Mr. Schroder: 130 what?

[fol. 134] Mr. Cody: Best against Kessler.

Mr. Schroder: Give me the citation, please.

Mr. Cody: 130 Federal, page 24.

Mr. Schroder: Seventh Circuit?

Mr. Cody: Case in the Seventh Circuit.

Mr. Smith: Is that a Federal 2d or—

The Court: Federal?

Mr. Cody: Just Federal.

Mr. Lockerman: Not Federal 2d? Its so long ago.

Mr. Cody: That is a situation where the plaintiff testified in his own behalf, goes to his credibility as a witness. Bear in mind, we haven't come to the question of impeachment yet, because on the subject of impeachment we have got three Code Sections in Georgia, three specific Code [fol. 135] Sections that deal with impeachment. Only some phases of this case come within the provision of those sections.

The Court: All right; what is it? 38-1804. What is the other?

Mr. Schroder: 1804—38-1804.

Mr. Cody: Let me give you the Code Sections on impeachment. 38-1801, 1802, and 1803.

The Court: 38-1801, 1802, and 1803.

Mr. Cody: Let me read you this last section. "A witness

may be impeached by contradictory statements previously made by him as to matters relevant to his testimony and to the case. Before contradictory statements may be proved against him, (unless they are written statements made under oath in connection with some judicial proceedings) the time, place, person, and circumstances attending the former statement shall be called to his mind with as much certainty as possible; and if in writing, the same shall be shown to him, or read in his hearing, if in existence; and to lay this foundation, he may be recalled at any time. When thus impeached, he may be sustained by proof of general good character, the effect of the evidence to be determined by the jury." Now, I want to state to the court here and now in unmistakable terms that a lot of statements have been made in this case in which I expect to apply the rule of impeachment, and when you do and prove previous contradictory statements or any of the [fol. 136] other impeaching qualities referred to in any one of the three Code Sections, specific acts or conduct, when they become applicable, I intend to take advantage of it.

The Court: I am basing this on some of the questions that have been propounded. Say you ask Coach Butts, had he made a statement or did he make a statement that he did call Coach Bryant and make these certain statements which are set out in the allegations—

Mr. Cody: Yes, sir.

The Court: —and he denies them. Then how could any of those specific acts about which you propounded questions in regard to a night at the Phoenix Motel in Lexington, Kentucky, how could that be admissible?

Mr. Cody: Because the jury may not believe him under oath, because he has testified both ways under oath. It's got a lot to do with the case; as a matter of fact, it gets almost down to the guts of the case.

Mr. Schroder: Say that again, please.

The Court: You want me to ask the question again?
[fol. 137] Mr. Schroder: I didn't get the answer except

he says it gets down to the guts of the case. What is the reasoning of it?

Mr. Cody: Suppose he testifies under oath—well, he has already testified by deposition, which is under oath. Suppose there are a lot of misstatements in there.

The Court: Of course, you can question him about his deposition.

Mr. Cody: Well, that is impeachment.

Mr. Smith: What is relevant about his being in the Phoenix Motel?

Mr. Schroder: Well, that is—I can't—I can't answer that at the moment.

The Court: I am not questioning the—what I am saying is—

Mr. Cody: I am not going to disclose my entire case.

The Court: How could that—have you got any authority for how that could be?

Mr. Cody: I have got the authority of this Code Section, when a man testifies under oath.

[fol. 138] The Court: Oh, yes; I know you can show that he made various, certain contradictory statements before, but how can you show that he might have had a woman at the Phoenix Motel, or whatever it might have been, how would that be relevant?

Mr. Cody: It could become relevant in several different points of view. If he won't tell the truth about it, the jury has got a right to say he might not tell the truth about anything. That is how you impeach a witness. In the final analysis—

The Court: Yes, sir; I can see where your proposition is whether he admitted this telephone call or not, or if he did, but I can't see the relevancy of specific acts with some woman, if that is what eventually comes up, and I am basing it on some of your depositions.

Mr. Joiner: Is Your Honor referring to specific acts, are you limiting it now to impeachment?

Mr. Schroder: No.

Mr. Joiner: Or just generally.

Mr. Schroder: The man is on the stand—

[fol. 139] The Court: The man is on the stand, Coach Butts is on the stand; you are questioning him, and you ask him about statements he made to Griffith or whoever it was that he admitted doing this, or if he did, I am assuming that would be relevant, but what about the fact if he spent a night with a woman before the Georgia-Alabama game, how could that be relevant? I am basing it on the nature of the depositions that were propounded.

Mr. Cody: Well, a witness may be impeached by proving the contrary to the facts to which he has already testified.

Mr. Lockerman: Relevant facts only.

The Court: It has to be relevant facts to the issue.

Mr. Cody: A witness may be impeached by disproving the facts testified to by him.

The Court: That's right. I go with you there. That is in regard to the statement, say, he made to Coach Griffith or some other coach; I don't know. How about whether he spent the night in the Tutwiler Hotel with some woman before the Georgia-Alabama Game?

Mr. Cody: I say it is relevant to his competency as a witness, his credibility as a witness.

[fol. 140] Mr. Schroder: Under what Code Section?

Mr. Cody: 1803.

Mr. Joiner: Your Honor, you have got numerous statements by this plaintiff to the effect that he has never done anything disloyal.

The Court: Well, I don't know that that is disloyal. I am not willing to take judicial—

Mr. Joiner: Well, Your Honor, I think—

Mr. Cody: I can give you an actual illustration of being disloyal to his team, carrying a woman around with him, with the team, of this character. You don't think that that is material?

The Court: I don't think it is a proper thing to do, but I don't know—I can't see—

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Mr. Joiner: Your Honor, on this point of disloyalty, I realize at first it might not seem to be relevant, but it is very definitely relevant to this case for this reason. He had made a number of statements that he has done no act of [fol. 141] disloyalty. Also he has made the statement that he has faithfully carried out the trust that has been given to him in the guidance and education of young men. Now, it is certainly relevant to show in this case, if in fact there is evidence to this effect, that he has betrayed that trust by carrying a woman with him on football trips, that he has been disloyal to the University of Georgia by charging them, without any justification or authorization whatsoever, for the expenses of her room and transportation, and other things. There is no question but that under numerous cases that evidence of similar acts which go to prove motive or intent are admissible. It doesn't make any difference whether they are acts of specific misconduct or acts that are not of specific misconduct. It is a question of motive and intent. They are always admissible.

The Court: How are you going to prove that—say you prove he took a woman to the Georgia-Alabama game and stayed at the Tutwiler Hotel. How is that any evidence of disloyalty?

Mr. Joiner: We can show further it was charged to the University of Georgia, it would be fraud and deceit to the University.

The Court: Well, now, we can't get into trying that case.

Mr. Joiner: It would be an evidence of his intent, and it would refute his statement that he has never done anything disloyal.

[fol. 142] Mr. Schroder: He has got to prove fraud and deceit. As soon as that was brought to his attention, he paid it. That is not fraud. You have got to prove fraud if you are going to do that.

Mr. Joiner: Assuming we are able to prove the fraud.

Mr. Schroder: I still don't think it would be relevant. I might illegally charge parking to the Government or taxi-

fare, when technically I wasn't supposed to do it, and sometimes you have to make refunds. I know, because—

Mr. Joiner: If it is a question of technical error, it should be excluded. If it is shown it was done knowingly and willfully, it is certainly evidence of motive and intent on the part of the plaintiff. He testified his motive and intent on giving this information was nothing disloyal to the University of Georgia, and his motive and intent in this telephone conversation, which presumably they will admit that the telephone conversation took place and that football was discussed, but the motive and intent of the plaintiff in talking to Coach Bryant was not one of the disloyalty.

The Court: We are getting off carrying a woman to the Tutwiler Hotel before the Georgia-Alabama game. I don't know what the rules and regulations are. I imagine they are pretty liberal. I know they are in—what do you call it—proselyting. I know they are there.

Mr. Bondurant: The spelling is a little different, but I think it is close.

[fol. 143] Mr. Strubing: Excuse me.

The Court: I am sorry; I thought it would be well—

Mr. Schroder: You going back to the office?

Mr. Strubing: Going back to Philadelphia.

Mr. Schroder: Good to have seen you.

The Court: I can't—unless you can show me something, I don't believe that those particular acts—I didn't know that was your theory. I thought your theory on that was showing his reputation, and I didn't think that was admissible.

Mr. Cody: There is no question but what it would be admissible on reputation on cross-examination, not on direct examination, of a witness.

Mr. Lockerman: Not cross-examination of Butts.

The Court: If they put his character in evidence, if they do put his character in evidence, then, on what we just discussed, I would be inclined to think they could ask the witness about specific acts.

[fol. 144]

TRANSCRIPT OF PRE-TRIAL CONFERENCE—July 29, 1963

The Court: I will be frank with you, as far as I can see I think it is a plea of justification, but I think it is libelous per se.

Mr. Cody: It might be, but it depends on—it depends on what the evidence is, Judge. If you base it on the man's business at the time the publication took place, I don't know—

The Court: I don't believe, Mr. Cody, I will admit that that case—I don't believe that fact that a man is temporarily out of work, if he has been engaged in something for thirty-five years and he is temporarily out of hazardous occupation for six weeks or two months, I don't think—

Mr. Schroder: I didn't mean it that way. You are absolutely right about that part of it, because you were taking it in its literal sense. What I mean to say was that if the evidence shows he has given up this business, and that is what I claim it will show, and would change the question of whether or not—

Mr. Schroder: There is evidence—

Mr. Cody: —it is libelous per se. A man could spend fifty years in a particular business and get out of it completely, and then somebody comes along and libels him, just because it had something—it had some connection with the business which he was in for fifty years, it doesn't make it [fol. 145] libelous per se. The evidence might be such in this case that it will be libelous per se.

The Court: Well, I think in fairness to both parties I should—I stand to be corrected by the Court above, but I think it is a plea of justification, and I will rule to that effect.

Mr. Cody: Now, Judge, the next—

The Court: If you want me to rule in the courtroom—we have got the records here; you make your points now where you can certainly protect your record.

Mr. Schroder: If it will be understood that I do here and now and will hereafter except to that, there is no need for me to make it any other time.

The Court: It will be in the record; that will be the ruling of the Court.

Mr. Cody: I think the next most important point in this case is whether or not, for any reason, specific acts of misconduct of this Plaintiff are admissible in evidence. I am not talking about the question of character witnesses now [fol. 146] and cross-examination. I think everybody pretty well agrees what the law is on that.

Cox Against Strickland is about as clear as it can be, but there are a half dozen reasons why acts of—specific acts of misconduct are admissible in this case, and I am going to ask Mr. Joiner to speak briefly on that point, because, as I view this case, it is one of the most important points in the case. We have been—we are charged in this complaint with having libeled this Plaintiff ten million dollars, and we have got a right under those circumstances and under the—under the circumstances as alleged in this complaint to bring in certain acts. Some of it are in mitigation of damages, doesn't go directly to the question of liability, and I will let Mr. Joiner, he has a brief before him.

I think we ought to give Mr. Schroder a copy.

Mr. Schroder: That would be nice.

The Court: The only case I can find on that question is the case someone cited here before, and I believe it was Kessler versus Best or Best versus Kessler, an old Federal Court decision back in 133 Federal—not Federal 2d—and I shepardized that case, and I can't find anything on the point; I mean, I can't find where it has been cited.

Mr. Cody: Is that the mitigation of damages case?

The Court: Yes, sir.

Mr. Cody: Here is my point—

[fol. 147] The Court: Have we got the 133 up here?

Mr. Joiner: 130, I believe it is, Your Honor.

Mr. Cody: Let me make one point.

The Court: Let me talk to Professor Kirby at Vanderbilt Law School; maybe he can help us.

The Court: This is Professor James Kirby of Vanderbilt Law School.

Mr. Schroder: Kirby?

The Court: Yes. He is the counselor for the Southeastern Conference, and they have requested that he sit in on the hearing, just have a seat inside the bar.

Mr. Schroder: I have no objection.

Mr. Cody: No.

The Court: There is no objection, Professor.

[fol. 148] The Court: He said he is a special counsel for the Southeastern Conference.

Mr. Schroder: Maybe he can help us; maybe he will bring some law with him.

The Court: I don't know whether these professors of law will do you any good.

Mr. Joiner: Judge, Homer said he didn't think you have the 130 Federal here. I have a copy.

The Court: I have read the case. In that case—

Mr. Joiner: I think you will find, Judge, from reading the cases that we have cited in our memorandum in the light of this petition that there are a good many other reasons other than mitigation of damages.

The Court: What would be other reasons?

Mr. Cody: Well, let me give you—pick up the article. We have got four or five different reasons set forth. Give him the substance of it.

Mr. Joiner: I think the first thing to consider is just briefly the Federal rule on evidence. There are four rules [fol. 149] that have been established by recent Fifth Circuit—by recent decisions of the Fifth Circuit. The first is the question of admissibility as procedural and not substantive. Federal Courts are not required to follow State Law.

Second is that in determining the admissibility of evidence the Federal Court is not bound by State Court rule that is less liberal than another rule which the Federal Court might be free to adopt.

The next rule is the Federal Rule concerning evidence, is one of admissibility and not exclusion. Of course, that comes from a plain reading of Rule 43.

And then the last one, and this is very important, although Rule 43(a) specifies three categories of evidence which shall be admitted in Federal Courts, it does not prohibit the receipt of probative evidence outside these three categories. Those cases are *Monarch Insurance Company versus Stack(?)*, *Dallas County versus Commercial Union*, and *Hamby versus Commercial Union*, and *Hamby versus Woolworth*, all recent Fifth Circuit cases.

The first purpose for which this evidence would be admissible would be in cross-examination of the Plaintiff's character witnesses, if the Plaintiff does offer any character witnesses, and we filed a previous brief on that point. I think we pretty well covered it.

The Court: You covered that.

Mr. Joiner: The second is that specific acts of misconduct may be inquired into on the cross-examination of the Plaintiff in order to test the credibility of the Plaintiff, and, in this connection, the case of *Best versus Kessler*, which Your Honor has referred to, is pertinent.

Now, in that case—

[fol. 150] The Court: I thought that case was on mitigation of damages.

Mr. Joiner: Yes, sir, Your Honor, it is; but it is also on this point in this sense. The evidence, you will recall in *Best versus Kessler* was admitted and the objection was not excluding the evidence but was on a charge which limited the evidence to this one ground, the credibility of the plaintiff. There was no objection to the admissibility of the evidence for that purpose, and so the case does not rule specifically on that, but the dictum in the case clearly states that it was admissible for the purpose of credibility of the witness, and also, this, of course, indicates a decision by a District Judge to the effect that it is admissible for the purpose of credibility.

The Seventh Circuit went on to say it is admissible in litigation of damages, and the District Court erred in limiting it to strictly credibility and not allowing it on the mitigation of damages.

Also a recent Fifth Circuit case has some pertinence, the case of Delpit versus Nocuba Shipping Company. Although it is not a libel case, it does deal with some of the same types of misconduct that we are concerned with in this case. This was a case in which—

Mr. Lockerman: What is the citation?

Mr. Joiner: It is in the brief; 302 Fed. 2d. 835.

A longshoreman brought an action to recover for injuries received as a result of the alleged unseaworthiness of a vessel. He was allowed, that is the counsel for the [fol. 151] Defendant, in cross-examining the Plaintiff, to go into his former common law wife and children by his former common law wife, and the Court said, although this testimony may perhaps have had a slightly prejudicial influence, it was properly admitted in an attempt to show an inconsistency with a prior declaration by the Plaintiff and thereby impeach his credibility.

Of course, we would have to have some inconsistency, but it is our position there will be some inconsistencies, and this testimony would be relevant to show the inconsistencies in prior statements of the Plaintiff. That covers that category.

The next one gets into mitigation of damages. We have three separate cases of mitigation of damages. The first is different from evidence for the purpose of showing that the Defendant has a bad reputation. That is Best versus Kessler. The first phase is that such evidence is admissible for the purpose of showing that the Plaintiff is not a man of delicate sensitivity.

In this case the Plaintiff has brought his action, and I am quoting now from the complaint, for the injury to his peace, happiness and feelings. Now, that is a different element of his damages from injury to his reputation. Having tendered this issue, then any evidence which tends to show that the man is not delicately sensitive is pertinent because it shows that he was not injured to the same extent, his feelings were not injured to the same extent as would be true with a more sensitive man. In this case citing the case of Wamsley versus Kopezynski—

Mr. Schroder: Who?

[fol. 152] Mr. Joiner: Wamsley versus Kopczynski, it looks like, and they are talking about this same type of evidence.

"This evidence was potent; it means much viewed in the light of other evidence in the case. Such a character as it was intended to portray is not usually delicately sensitive, nor easily injured to any great extent. The jury might have taken that view, and have determined that mere nominal damages would in their judgment suffice."

The Court: That is on the question of mitigation of damages?

Mr. Joiner: Yes, sir; but it is a different phase of mitigation than just the reputation itself.

Mr. Schroder: Is that a Federal case?

Mr. Joiner: No; that is a New York case.

Then, there was a Georgia case in 31 Ga. 309, which does not specifically hold such evidence to be admitted for the purpose of showing the man is of not delicate sensitivity, but I believe that the inference is present in that case.

And there is the case, a Southwestern case, and I believe that is a Texas case; also another New York case, and finally a case from the District Court in Massachusetts dealing with an analogous situation, not specific acts of misconduct but acts of prior abuse, giving and taking abuse. That was Mayor Curley, and Mayor Curley had given on any number of occasions, given the type of abuse he was [fol. 153] suing for, and this also received that type of abuse. The Court held that evidence of this was pertinent as bearing on the sensitivity of the feelings of the Plaintiff in the case.

We come down now to the second phase of the mitigation and that is that this evidence is admissible for the purpose of showing the Plaintiff is not a man of integrity. In paragraph 12 of his complaint the Plaintiff states that his action is for a trespass upon his integrity. Integrity is defined by Webster's New International Dictionary as "Moral soundness; honesty; freedom from corrupting influence or

practice; especially strictness in the fulfillment of contracts, the discharge of agencies, trusts and the like."

In the brief we cite a number of cases that adopt the same definition of integrity.

Now, while the case of Best versus Kessler talks expressly about mitigation of reputation, I think that it has a very definite bearing on this issue of integrity, because the charge there was made with reference to the man's business. He was charged with dishonesty and clandestine activity in connection with the business transactions, and I believe that reading the holding of the case, although the word "Integrity" is not mentioned specifically, would indicate that that case stands for the proposition that such evidence would also be admissible on the question of integrity.

We come now to the question of mitigation in general, showing the man's character or reputation was injured or was not good before the libel. The same thing that you would argue where there was proper damage to an automobile prior to the collision, out of which the case arises. The simple logical argument is that it had previously been damaged, and so the subsequent damage is not as great as it would have been if there had been no previous damage.

[fol. 154] The Court: All that is true, but doesn't the Georgia code limit you on character as to the form of questions?

Mr. Lockerman: Yes, sir.

Mr. Joiner: I think the Georgia code is limited strictly to character evidence for the purpose of impeaching a witness. I don't think it goes any further than that, but even if it does, under the Federal rule we are entitled to the more liberal rule, and the fact that Georgia Courts exclude it would not cause it to be excluded in this case.

The Court: When the Circuit Court of Appeals passes on this case—I am sure they will one way or the other—isn't the question going to be on the substantive law of Georgia?

Mr. Joiner: No, sir. Cite Monarch Insurance Company versus Spaeh, Dallas County versus Commercial Union Assurance Company—well, those two cases are recent Fifth Circuit cases.

The question of admissibility of evidence is procedural and not substantive, and, therefore, Federal Courts are not, under the case of Erie versus Tompkins, bound to follow State law.

Mr. Schroder: That is a different situation; that is a different thing. This is brought under a statute of Georgia, under a libel law of Georgia. Ordinarily, I think, whether it gets to be a question of whether something is hearsay or not hearsay, the rule you just read I think applies.

[fol. 155] The Court: The only difference in this case and the State Court is that the—it is in the Federal Court by virtue of diversity of citizenship. As I understand the law it is incumbent on me to try a case as it would be tried in the State Court, as far as admissibility of evidence and so forth.

Mr. Joiner: These three cases are directly contrary to that view.

Mr. Cody: That is not correct, Judge. You have got a false impression there.

The Court: Well, some statements that I have read are it is correct. Maybe you have got some recent ones.

Mr. Joiner: These are all leading cases and are cited by Moore as being leading cases on this point.

Mr. Cody: On the definition of libel; yes; that would be true but not as to the admissibility of evidence.

The Court: On recovery of damages?

Mr. Cody: Well, I think on damages it would be substantive law.

The Court: Of Georgia?

[fol. 156] Mr. Cody: Yes.

Mr. Joiner: But this Monarch Insurance Company case, I believe, is the first case which was passed on the points, and it specifically holds that admissibility of evidence is

procedural and not substantive, and Federal Courts and diversity cases—

Mr. Cody: Is that that decision rendered by Judge Wisdom?

Mr. Joiner: Yes; I believe it is.

Mr. Cody: They go into a lot of detail in that case, Judge, about the admissibility of evidence. And also the other rule that in determining the admissibility of evidence in Federal Courts, the Federal Court is not bound by a State Court rule that is less liberal than another rule which the Federal Court would be free to adopt.

And then, of course, under 43(a) the plain reading of the rule itself, and its applicability in diversity cases, is that the Federal rule concerning evidence is one of admissibility and not exclusion, and, therefore, where there is a conflict between a State and Federal rule, the Plaintiff is, under Rule 43, entitled to the benefit of the more favorable rule, and these cases that I cite indicate "More favorable" means "More liberal".

The Court: You mean Federal cases?

[fol. 157] Mr. Joiner: Yes, sir. These Fifth Circuit cases are entitled to be admitted. So, no Georgia case has any pertinency in determining this issue, unless the Georgia case bears on admissibility or unless the Georgia case excludes it and the Federal rule also excludes it. But the very fact it is excluded by a Georgia case would not exclude it in a diversity action in the Federal Court.

The Court: Your contention is that the rules here should be the same as it is in the Kessler versus Best or Best versus Kessler?

Mr. Cody: Right.

The Court: In other words, in that case, as I recall it, had some question about the business dealings and somebody suing somebody for libel; they raised the question in that, hadn't he had an affair with a Spanish actress or something like that?

Mr. Cody: That's right.

Mr. Joiner: Yes, sir.

Mr. Cody: Here is—go ahead.

Mr. Joiner: Another category, which, as far as I am able to determine, is unquestioned in any jurisdiction, on the [fol. 158] laws—on the facts, we have got a difference probably on facts. In Paragraph 11(b) Plaintiff complains the article charges him with being a corrupt person, which it does not. Now, from reading the complaint, the only—

The Court: You admit it is libelous per se?

Mr. Joiner: No, sir; no, sir. I admit it charges him with being a corrupt person—

The Court: All right, sir.

Mr. Joiner: —but on that point, from the case of Morris versus Evans in 22 Ga. App., if mere fraud, dishonesty, immorality or vice be imputed, no action lies without proof of special damages, so to charge a person with being corrupt is not in and of itself libelous per se.

The Court: If it affects him in his business it is, though.

Mr. Joiner: Yes, sir; if it is made with reference to his trade or profession.

The Court: This is made—I mean, the whole article is based on his profession as a coach.

[fol. 159] Mr. Joiner: But this Supreme Court case seems to be right in point on that, unless he is engaged in the profession at the time of the libel.

The Court: I mean, in fairness to you, I am not inclined to—I mean, the interim period of six weeks, the fact that he had resigned from the athletic directorship and so forth, I believe as far as the petition alleges—

Mr. Joiner: I agree with you so far as the petition alleges.

The Court: I think it is libelous per se.

Mr. Joiner: I mean, the petition doesn't show he is not any longer in the profession, but this case does not make any distinction as to time.

The Court: We can check the record in the case to see what the distinction was, but it is apparent from the case that we have the same situation, that a person was out of business for a little while and went right back into business.

The Court: That is the case in the 50 Ga.

Mr. Joiner: No, sir. This case right here, 143 Ga. [fol. 160] Mr. Cody: 143, Ga., isn't it?

Mr. Joiner: Yes, sir.

Mr. Cody: The Weatherholt case.

Mr. Joiner: The 5th Headnote covers this point. The Plaintiff in this case was in business and went out of business, and was libeled, and went apparently right back into business, and they said since he was not in business at the time of the libel he could not recover, in the absence of proof of special damages. If he can show special damages—

Mr. Joiner: He is not pleading special damages.

The Court: He is not pleading special damages.

Mr. Joiner: No, sir; but if he can show special damages, that is another question.

The Court: I say, if it could be shown that he did that, and that he used it and he did not repay it under such circumstances, he had to be called on for it, wouldn't your circumstances go into, even at that, would it be admissible. [fol. 161] Mr. Schroder: No, sir. I am saying it would not be admissible. It could not possibly be admissible. We are suing, as you read there a moment ago, for the damage they have done to him in his chosen profession.

The Court: Yes, sir.

Mr. Schroder: And that is what the suit is based on.

The Court: Well, if the suit is brought on the basis as a football coach, Georgia Courts have even held that you can be defamatory to a farmer, that that is included—I know it covers football.

Mr. Joiner: But that the issue—

The Court: That is what he has got in his petition, his reputation as a successful coach and leader of the coaching profession.

Mr. Cody: You are assuming, of course, that the evidence will fully justify all of that. Your judgment now as to what you intend to do would be tempered with what the evidence is on that?

The Court: Yes, sir.

[fol. 162] Mr. Cody: You could—because on this particular point it does turn on what the evidence eventually will be.

The Court: What I am saying is this. The fact that he was out of it six weeks and during this six-week interval this article appeared, between February 28 and March 23, I don't think it should affect him as far as—

Mr. Cody: Okay.

The Court: 143 Ga., nevertheless, to the contra—

Mr. Joiner: There might be a difference if the evidence shows he definitely left the athletic field forever prior to the publication of this article.

The Court: Well, I assume you are not going to show that from what the petition says.

Mr. Schroder: That's right.

Mr. Joiner: I think it would be a question.

The Court: If he says, "I got out of the coaching profession, I never intended to go back, and as far as I am concerned I was through with the coaching profession," I think your 143 Ga. might apply, but unless it was—

Mr. Cody: We will hold that part of it in abeyance; I understand Your Honor's ruling.

• • • • •
Mr. Schroder: The petition in this case was deliberately drawn so as to confine it to his reputation in his profession. Misconduct, which you are speaking of, hasn't anything to do with the profession.

Mr. Cody: Look at your punitive damages situation.

Mr. Schroder: Sir?

Mr. Cody: Look at your punitive damage situation.

Mr. Schroder: Like I say, if there is any misunderstanding as to what that means, then we will redraw that part of it. We were tracking the punitive damages statute, or trying to; maybe we did embellish it a little bit.

• • • • •

[fol. 164] HUGH FLEMMING, called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. You are Mr. Hugh Fleming?

A. Yes, sir.

Q. I believe you have been sworn as a witness, have you not, Mr. Fleming?

A. I have.

Q. Where do you reside, Mr. Fleming?

A. At the present time I am residing in Athens.

Q. What is your business connection?

A. I am with Southern Bell Telephone Company.

Q. Were you at one time manager of the Athens branch?

A. I was district manager in Athens until July 1st.

Q. And then you moved to Atlanta?

A. Yes, sir.

Q. Although you still maintain your residence at Athens?

A. Yes, sir.

Q. Mr. Fleming, in response to a subpoena, did you bring with you a toll ticket—

A. Yes, sir.

Q. —of your company with reference to a telephone call, long-distance telephone call that took place on September the 13th?

A. Yes, sir.

Q. Will you let me see that, sir?

A. Those are copies attached.

[fol. 165] Mr. Cody: I'd like to have this identified as Defendant's Exhibit No. 13.

The Clerk: 13; yes, sir. Defendant's Exhibit No. 13 is a toll ticket.

Mr. Cody: Yes.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 13.)

By Mr. Cody:

Q. Mr. Fleming, is this long-distance toll ticket on an IBM card?

A. Yes, sir.

Q. Which would be difficult for a layman to interpret; is that a correct statement?

A. Some parts of it; yes, sir.

Q. Would you be kind enough to tell us what that card discloses?

A. Well, this card indicates that on September the 13th a call was placed to Tuscaloosa, Alabama, to telephone number 752-7441. It shows that it was placed by Wallace Butts and indicates that it was placed to Paul B-r-i-n-c-e.

Q. Is that spelling legible, the latter part of it? Are you having difficulty trying to find out who that is?

A. It appears very legible to me; yes, sir.

Q. Now, Mr. Fleming—

[fol. 166] Mr. Schroder: I didn't hear the answer.

The Court: He said it appeared legible to him. But how was the name spelled?

The Witness: B-r-i-n-c-e.

By Mr. Cody:

Q. Mr. Fleming, what time did that call—what time does that toll ticket show the call was made?

A. This indicates this call was made at 10:29 a.m.

Q. On September 13?

A. Yes, sir.

Q. 1962?

A. My ticket has no indication of the year on it, sir. It was billed during October of '62, but the ticket itself here does not carry the year.

Q. You don't maintain your records back of one year, do you?

A. We maintain them for a period of twelve months normally; yes, sir.

Q. Mr. Fleming, on the back of that card or toll ticket, did you have some symbols indicating the time consumed in that particular call?

A. Yes, sir; we have.

Q. Could you interpret for the jury what that first circular symbol means?

A. Well, the first circular symbol on the back indicates the time that the call was established.

Q. What about the second one?

A. The second one indicates the number of minutes that the call lasted.

[fol. 167] Q. And the third one?

A. Indicates the number of seconds that the call lasted.

Q. How many minutes and how many seconds was it?

A. This shows fifteen minutes and two seconds.

A. Does it—does the toll ticket show who the call was charged to?

A. The call—the ticket indicates the call was billed on a credit card number—card number 543-4531A-K35.

Q. Have you checked your records to see whose credit card that was?

A. No, sir; I haven't.

Q. Do you know that telephone was billed, what telephone number was billed for that call?

A. Yes, sir. This was billed to telephone number 543-4351.

Q. In Athens?

A. Yes, sir.

Q. Do you know whose number that is?

A. Yes, sir.

Q. Whose is it?

A. That is the telephone at the University, the athletic association.

The Court: Did you say the University of Georgia Athletic Association or the University of Georgia?

The Witness: It is the University of Georgia Athletic Association.

[fol. 168] By Mr. Cody:

Q. Mr. Fleming, did you bring with you a toll ticket indicating a call from Tuscaloosa to Athens?

A. Yes, sir.

Q. Will you let me see that a minute?

A. Yes, sir.

Mr. Cody: Will you identify these as No. 14?

The Clerk: Yes, sir. Defendant's Exhibit No. 14 for identification is a toll ticket.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 14.)

By Mr. Cody:

Q. Will you interpret for the jury what this toll ticket discloses? Give us the date of it first.

A. The date shown on this one is September the 16th.

Q. 1962?

A. Again I do not have the year indicated on this ticket.

Q. Yes, sir.

The Court: When was it billed?

The Witness: Frankly, sir, I don't know. This one was billed in Alabama.

[fol. 169] Mr. Cody: That is supplied by another deposition, Your Honor.

The Witness: And I did not have it.

The Court: I was ahead of you.

Mr. Cody: That information is in another deposition.

The Witness: This was a call that was placed to Athens, Georgia, from Tuscaloosa. The telephone Li 6-0262. It shows that it was a personal call to Coach Wallace Butts.

By Mr. Cody:

Q. Does it disclose the length of time that the call consumed?

A. Yes, sir. This one shows the conversation lasted sixty-seven minutes.

Q. And that is September 16?

A. September 16th; yes, sir.

Q. Let me have that just a minute. Would you mind leaving these exhibits with the Court until the completion of this case?

A. Mr. Cody, that would sure be up to the Court. These records should remain in our custody. We have copies of them if they would suffice; I'd like to leave those.

[fol. 170] The Court: Is there any objection to supplant these with photostatic copies?

Mr. Schroder: Of course not.

Mr. Cody: Very well. I have one or two more questions to ask Mr. Fleming.

The Court: All right, sir. They will be substituted with photostatic copies. They will have to remain here and the photostats can be made here.

Mr. Cody: We have photostats. He's made them for us.

The Court: All right, sir, go ahead.

By Mr. Cody:

Q. Mr. Fleming, are these records kept in the ordinary course of business of your company? Is it customary to maintain records of this type in the course of your business?

A. Yes, sir; it is.

Q. Is this the type permanent record that is made in connection with a long-distance call by your company?

A. Yes, sir.

[fol. 171] Mr. Cody: Did I give you a copy of the other one? You have both?

Mr. Schroder: I have two.

Mr. Lockerman: Do you remember what those exhibit numbers are?

Mr. Cody: I think we'd better mark the copies, ma'am. This would be 14.

By Mr. Cody:

Q. On this last exhibit No. 14, Mr. Fleming, what was the—what was the time of that call? When was it established, the connection?

A. This call was just about eight minutes of nine in the evening.

Q. Are the symbols on the back of these toll cards stamped by machine?

A. Yes, sir, They are stamped by a Calculagraph machine.

Q. That is an automatic machine that records the timing?

A. Right.

Q. Did I give you back the first ticket?

Now, let's see if we have the exhibits. This will be No. 13.

The Clerk: There are two of these.

[fol. 172] Mr. Cody: I believe that's all.

Cross examination.

By Mr. Schroder:

Q. Mr. Fleming, of course you have no idea what the content of either one of these telephone conversations consisted of, do you?

A. No, sir; I have not.

Q. Is there any way to find out by the telephone company or from the telephone company?

A. No, sir.

Q. Did you bring with you, Mr. Fleming, records of the following long-distance calls which were charged to the credit card of Coach Wallace Butts? I will read this list off, and you let me know if you brought them in, please, sir. October the 30th to Coach Ray Graves of the University of Florida; December the 14th, Coach 'Rabbit' Smith, Palatka; December 21, John Rauch, who was at

Tulane at the time, or Oakland, I forget; then January the 8th, John Rauch again; January 17th, Bernie Shiverley, coach at Kentucky; January 24, Ray Greaves, coach at the University of Florida, Gainesville; February the 6th—I mean, February the 8th, Coach Shiverley at Lexington, Kentucky; March the 28th, Bowden Wyatt, coach at the University of Tennessee; April 9, Joel Eaves, coach at Auburn University; April 25, Bob Ford, coach at the University of Kentucky; April the 26th, Paul Bryant, coach at Alabama; May 8, Bob Woodruff, coach at the University of Tennessee in Knoxville; May 16, Coach Walker of South Carolina; May 16, Dean Griffin, Denver, Colorado; May 16, Paul Bryant, Tuscaloosa; May 17, Paul Bryant, Tusca-[fol. 173] loosa; June—I mean, August 20, Paul Bryant from Tuscaloosa; August 24, Corbett, head coach at LSU; September the 9th, John White of the New York Giants; September the 13th—you have that one? September the 14th, Coach Michaelson at Pittsburgh in Pittsburgh, Pennsylvania? I said that one has been produced, September 13 Bryant at Tuscaloosa. I believe that is the one he has. September the 14th, Coach Michaelson at Pittsburgh University in Pittsburgh, Pennsylvania; September the 18th, Clyde Earhart in South Carolina; September the 22nd, R. Guepe, coach at Vanderbilt University; September the 26th, Guepe, coach at Vanderbilt University; September 22nd, Guepe at Vanderbilt University; September the 22nd, five days after the Georgia-Alabama game, Bryant in Alabama; October the 4th, Paul Bryant, Tuscaloosa, Alabama; October 4th, Weems Baskin, South Carolina University at Columbia; October 8, Bryant's secretary, Tuscaloosa, Alabama; October the 10th, Coach Howard at Clemson College; October the 15th, Ford, coach at the University of Kentucky; October the 16th, Ray Graves, coach at the University of Florida; October 18, Peterson coach at Florida State University; October the 19th, Jordan, coach at Auburn; October the 23rd, Bryant, Tuscaloosa, Alabama; October 25, Paul Bryant, Tuscaloosa, Alabama; October

25, Ray Graves, University of Florida; October 25, Mr. Ford, coach at the University of Kentucky in Lexington; October the 30th, Coach Walker, Charlotte, North Carolina; October 30th, Coach Howard at Clemson College, South Carolina; October 30, Paul Bryant, Tuscaloosa, Alabama; October 31, Howard at Clemson College; November the 8th, Ray Graves, coach at the University of Florida; November the 14th, Paul Bryant, Tuscaloosa, Alabama; No-
[fol. 174] vember 14, Coach Walker, Charlotte, North Carolina coach; November the 15th, Paul Bryant, Tuscaloosa, Alabama; November 19th, Howard at Clemson College, South Carolina; November the 21st, Marvin Bass at the University of South Carolina, November 29, Coach Bobby Dodd, Georgia Tech; November 30, Shiverley, Lexington—I will stop there. Did you bring any of those other records?

A. No, sir; I don't have those.

Q. All right, sir. Your answer is you don't have them with you?

A. I don't have them with me is right.

The Court: Did you subpoena them?

Mr. Schroder: No, sir, I didn't subpoena them.

The Court: All right.

Mr. Schroder: I thought they were going to have all the ones here that were there. I didn't understand what was in the subpoena, what was called for by the subpoena. I have never seen the subpoena.

The Court: Do you want it?

Mr. Schroder: Yes, sir. But—he is going to have three or four days; would it be too much trouble if I give you this list?

[fol. 175] The Witness: I can get them; yes, sir.

Mr. Schroder: I'd appreciate it very much.

The Court: All right, sir.

Mr. Schroder: You are here in Atlanta, are you, Mr. Fleming?

The Witness: I am in Atlanta. These are in Athens, but I can get them.

Mr. Schroder: Would it be all right if I have this reproduced and given to Mr. Fleming to get me these calls that I have listed here?

The Court: Yes, sir.

Mr. Schroder: Thank you, sir. I will do that within tomorrow, Your Honor. That's all.

The Court: Anything further from Mr. Fleming?

Mr. Cody: Nothing further.

[fol. 176] The Court: All right, sir, you may step down. Can Mr. Fleming be excused except insofar as obtaining those other records is concerned?

Mr. Schroder: Yes, Your Honor.

Mr. Lockerman: Wait just a second.

Mr. Schroder: I believe I subpoenaed you to bring some records from another area here.

The Court: That's all right—

Mr. Schroder: Can he give those to me so he would not have to come back tomorrow to identify them?

The Court: I thought you wanted him to come back with these other records.

Mr. Schroder: Not as a witness necessarily, but to deliver them.

The Court: He would have to identify the other records, would he not?

Mr. Schroder: Bring them all back tomorrow; is that right?

[fol. 177] The Court: All right, sir.

Mr. Cody: Let me ask Mr. Fleming one more question.

The Court: All right, sir.

Redirect examination.

By Mr. Cody:

Q. On these toll tickets, Mr. Fleming, the Calculagraph record that appears on the back as to the time element, is that when the parties start talking or when the first effort is made to try to get the call through?

A. The time of the call you are speaking of now?

Q. Yes.

A. It is stamped at the time you start talking.

• • • • •
GEORGE BURNETT called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. You have been sworn, Mr. Burnett?

A. Yes.

Q. Your name is Mr. George Burnett?

A. Yes, sir.

Q. Where do you live, Mr. Burnett?

[fol. 178] A. 3550 Durden Drive in Atlanta.

Q. How long have you lived in Atlanta?

A. Since December, 1957.

Q. Mr. Burnett, I show you what has been identified in this case as the Defendant's Exhibit No. 12. Will you take a look at that, please, sir, and hold it just a minute. Is that a record which you personally made?

A. Yes, sir.

Q. That your handwriting?

A. Yes, sir.

Q. How many pages are there to that Exhibit?

A. Seven.

Q. Do you remember the circumstances under which that Exhibit was made?

A. Yes, sir.

Q. Will you explain that to the jury?

A. On September the 13th I was in an office on Eleventh Street, in Atlanta of the Institute of Oral Hygiene. I was attempting to call to business associates by contacting them through an office of the Communications International

which is located in the Rhodes-Haverty Building, and as I kept dialing the number, it was busy. Knowing that they had two lines coming into the office, I continued every twenty or thirty seconds to try to get in, and after four or five attempts there was some funny noises and electronic sounds, and the next thing I heard was an operator's voice talking to someone. It was evident it was into an open circuit, because you could hear the background noises. And I heard the operator say, "Coach Bryant is out on the field but is on his way to the phone," and asked a party she identified as Coach Butts, "Do you want to hold or do you [fol. 179] want him to return the call?" Coach Butts said, "I will hold." And within a matter of a minute a man's voice came on the line; the operator identified him. He said, "Hello, Wally." And Coach Butts said, "Hello, 'Bear.'" And they started talking.

I realized very quickly at the outset that this was a football talk, and Coach Butts began giving information to Coach Bryant about plays that Georgia was using, both offensively and defensively.

Mr. Schroder: Just a moment, Your Honor.

The Court: Just a minute.

Mr. Cody: Don't go into that.

The Court: I don't believe there is any objection made, but I will—

Mr. Schroder: Yes, sir; there is an objection made, and I would like for the jury, to be instructed.

The Court: What was the objection?

Mr. Schroder: That there were certain plays given over the phone, I think before he can identify a play, there is a conclusion on his part.

[fol. 180] Mr. Cody: Yes, sir.

The Court: Yes, sir; I think it is a conclusion, and I sustain the objection to it.

Mr. Cody: I stopped him.

The Court: All right.

By Mr. Cody:

Q. How long had they talked before you started taking notes, Mr. Burnett?

A. Probably a minute or a minute and a half.

Q. What was the first statement; if any, that you recall that was made by either party?

A. To each other?

Q. Yes.

A. They said, "Hello."

Q. What's that?

A. They said, "Hello" to each other.

Q. What next?

A. Coach Bryant's first statement was, "Do you have anything for me?" And Coach Butts said, "Yes." And then they started talking.

Q. Look at your notes there, Mr. Burnett; you can refresh your recollection. Will you explain to the jury, if this does refresh your recollection, as to what was said, explain to the jury what you heard, and in doing so you can refer to your notes.

A. Well, as I have said before, I don't remember the exact words of those notes now. I do know the first page [fol. 181] I wrote 'Bear' Bryant's name down and Wally Butts' name down, and the words that Reismueller was the greatest in history. I do know—I do recall that Coach Butts told Coach Bryant that Reismueller was the best they ever had at Georgia in the history of Georgia.

Q. Do you know—did you know at the time whether or not Georgia had any such player as that?

A. No, sir; I did not.

Q. Do you know whether or not the spelling on your memorandum there is correct?

A. I wrote it as it sounded; I don't know.

Q. You wrote it R-e-i-s—

A. Yes, sir.

Q. —m-u-e-l-l-e-r?

A. Yes, sir.

Q. Turn to the next page, Mr. Burnett. Does the reference to Rakestraw mean anything to you or bring back any recollection of what was said about him?

A. He—this was written not actually as it was said. He said, "Rakestraw goes to the right, evidently is a man in motion." I don't remember; I wrote: "Rakestraw to the right."

Q. I am not asking you to explain the method of play; I am just trying to get you to explain to the jury if you remember what was said about Rakestraw.

A. That this one play that Rakestraw went to the right and on an optional left pass, if they can block the man on the corner, if not, they would keep running. If they can block the man on the corner, they keep running; if not, they pass.

Q. You were writing what you heard?

A. I was writing as I could get the words.

[fol. 182] Q. Do you understand what that means?

A. Yes, sir.

Q. Take the next note that you have.

A. Well, he said—I wrote down "Well-disciplined ball club—added two coaches." It was said at this time that this was of no thanks to Johnny Griffith, "we have added two coaches." What that meant I had no way of knowing.

Q. What did it mean to you?

A. It didn't mean anything to me actually. I asked one of my associates—

The Court: That would be hearsay.

Mr. Cody: Don't go into that.

The Witness: Sorry.

By Mr. Cody:

Q. Did you know that Georgia had added two coaches?

A. No, sir.

Q. I believe you said that the order in which these pages are clipped together now are not necessarily the order in which you made these notes?

A. That is right.

Q. You don't remember the words in which they were taken?

A. No; I don't. I know that this was the first page because I wrote the two parties' name on it, and I wrote the last page because this was the end of the conversation [fol. 183] where I wrote the time and the date and the last note.

Q. Turn over to the next page, the first item.

A. You want me to read it?

Q. Is that an abbreviation of what was said? If it is, tell the jury what the entire conversation was on this point or any other one in the notes.

A. I don't remember all of the incidental conversation pertaining—as I said, I was writing these as they were talking, therefore I missed some of the conversation as I was writing. It said, "On side guard pulls on sweep."

Q. Do you remember anything else that was said about that?

A. No, sir.

Q. What about the next item?

A. "Don't overshift." Whether this was in relation to the fact of the on side-guard pulling, I don't recall; it came immediately after this.

Q. What about the next item?

A. He made the remark that Woodward—

The Court: Who made the remark?

The Witness: I'm sorry; Coach Butts told Coach Bryant that Woodward commits himself fast on pass defense, and he was the safety man; I wrote this one, "Woodward commits fast—safety man."

By Mr. Cody:

Q. There is a dash after the word "fast"?

A. Yes, sir.

Q. Anything else said about that?

[fol. 184] A. No, sir.

Q. What about the next item?

A. As I wrote it, it says, "Weak defense, anybody except Blackburn." He made the remark the pass defense was weak, pass to anybody and anybody's direction except Blackburn, that he was strong on pass defense.

Q. Did you know that Georgia had a player by the name of Blackburn?

A. No, sir; I do not.

Q. Do you know anything about the Georgia team?

A. No, sir; I had not followed the Georgia team by names, and I didn't know the people involved.

Q. Have you ever seen Georgia play?

A. No, sir.

Q. Do you know very much about football yourself?

A. Yes, sir.

Q. You play in high school?

A. Yes, sir.

Q. Play anywhere else?

A. Freshman year of college, just on the squad my freshman year, and the war broke out.

Q. Did you later learn there was a Blackburn on the Georgia team?

A. No, sir; I don't remember that I ever learned there was anybody named Blackburn on the team. It still doesn't mean anything to me.

Q. Turn over to the next page, Mr. Burnett. What is the next item?

A. It says, "Baer slot right, split right end out."

Q. Does that mean anything to you?

A. I have since been told—

[fol.185] Mr. Schroder: Your Honor—

Mr. Cody: Don't go into what anybody told you.

The Court: I sustain the objection.

By Mr. Cody:

Q. Did you know at the time what that meant?

A. "Slot right" was a term I wasn't acquainted with.

Q. I notice you spelled "Bear" B-a-e-r?

A. I wrote it as I heard it.

Q. Is that what it sounded like to you?

A. That is what it sounded like to me.

Q. Did you find out later who that referred to?

A. Yes, sir; I was told—

Mr. Schroder: Same objection.

The Court: Sustain the objection. Don't lead him into hearsay, Mr. Cody.

By Mr. Cody:

Q. Let's go to the next item, Mr. Burnett.

A. The next one says "Long count, left half in motion." I wrote this, and I cannot recollect what it was in reference to, whether—I did not draw a line after the first one I read. Evidently this was all part of sequence as I was writing.

Q. Were you trying to write down everything you heard?
[fol. 186] A. I was trying to catch as much of it as I could; yes, sir.

Q. What about that next item?

A. It says, "Best since Trippi," and I wrote the word "Porterfield." He made the remark that Porterfield was the best back since Trippi.

Q. Did you know Porterfield?

A. No, sir; I knew—

Q. Did you know Georgia had a player by that name?

A. No, sir; I did not.

Q. This is still all in your handwriting.

A. Yes, sir; it is.

Q. I say "handwriting"; it is your—

A. It is a combination of printing and writing. I print more than I write.

Q. Turn over to the next page, Mr. Burnett. What is the next item?

A. It says "Baer on a hook on goal line."

Q. Did that mean anything to you?

A. No, sir; it didn't. I wrote it; he said that when they are on the goal line that "Baer" goes on a hook, and I didn't have the slightest idea what he meant on a hook.

Q. What about that next item?

A. "Slot to right ends normal (3 yards)." He made the remark this was the formation they used until they get down to the—close to the goal line, that they play a slot to the right and the ends are normal, split out about three yards.

Q. Did that mean anything to you?

A. Well, the "ends out 3 yards" did. As I say, the "slot" is—was new to me; I didn't understand what a "slot" was.

Q. What about the next item?

[fol. 187] A. It says, "Right halfback on fly," and then it says, "Left halfback, quarterback gives to left half, left guard pulling blocks on corner."

Q. What does all that mean, if you know?

A. Well, to me it meant a—

Mr. Lockerman: Your Honor, I don't think that—

Mr. Cody: I withdraw that.

The Court: I don't think, Mr. Cody, what his interpretation was is admissible. I sustain the objection.

Mr. Cody: I withdraw that.

By Mr. Cody:

Q. Was anything else said on that subject other than what you wrote down on that item?

A. I don't recall specifically.

Q. Now, turn over to the next page; take the first item there.

A. "Slot or wide slot till goal line."

Q. Do you remember anything else that was said on that subject?

A. This is where he said they used this slot or a wide slot until they get down to the goal line.

Q. What about that next item?

A. "Can't quick kick." I wrote there just the three words. This was in response to a question. Coach Bryant asked

him, "How about quick kicks?" And he said, "Don't be worried about—" Coach Butts said, "Don't be worried about [fol. 188] quick kicks; they haven't got anybody that can."

Q. Let's get to this next item.

A. You want me to read it?

Q. Read that.

A. "Slot right, right half on fly, screen to him."

Q. Do you remember anything that was said amplifying that statement?

A. He just made that statement.

Q. What about that next item?

A. I wrote down "29-0 series" and "Baer catches everything they throw." He put this in the form of a statement to Coach Bryant, "You remember my old 29-0 series." They used that. And "Baer catches everything they throw," he referred to it as their 29-0.

Q. Turn over; anything else you heard with reference to that particular item?

A. No, sir.

.

Direct examination (Continued).

By Mr. Cody:

Q. Mr. Burnett, I will return these notes to you. Do you recall where we were when we adjourned?

The Court: The Court Reporter can read it back.

Mr. Cody: I remember now.

By Mr. Cody:

Q. Turn over to the next page, Mr. Burnett. Read that item.

[fol. 189] A. It says, "Slot right, left end out 15 yards."

Q. Do you remember anything that was said about that other than what you wrote down?

A. No, sir; I don't remember anything else other than that.

Q. What about the next item?

A. The next item says, "Drop end off, contain with tackle." This was a Georgia defensive play. I wrote down "Georgia (defense)" and drew an arrow from "Georgia," that Georgia drops the end off and contain with a tackle.

Q. What about the next item?

A. You want me to read it as it is?

Q. Read it.

A. It says "Give Wally ring Sunday," and then I wrote "641 Athletic Office, 10:04 a.m., September 13, 1962, Jackson 5-3526."

Q. Let's back up there just a minute. Who was going to ring who Sunday?

A. Coach Bryant asked Coach Butts, "Will you be home, 'Wally'?" And he said, "Yes, I will." And he said, "I will give you a ring Sunday." And he said, "All right." And they hung up.

Q. What is this "641"?

A. The operator stayed—I stayed on the line. I didn't hang the phone up immediately, and the operator came on and asked me—asked—

Mr. Lockerman: Your Honor, please, I don't think that he ought to go into any conversation.

Mr. Cody: Don't go into that.

[fol. 190] The Court: Yes, sir; that would be hearsay; I sustain the objection.

The Witness: I asked the operator to what number—

Mr. Lockerman: I don't think he ought to go into that conversation, Your Honor.

Mr. Cody: Don't go into that.

The Court: I sustain the objection.

By Mr. Cody:

Q. This "10:40 a.m.," that is the time?

A. This was the time the call was completed. I looked at my watch and wrote down the time.

Q. And the date?

A. And the date.

Q. September 13, 1962?

A. Yes, sir.

Q. What is that number at the bottom?

A. This is the number I was trying to get, Jackson 5-3536 was the Communications International Office.

Q. Before we get off of this particular call, Mr. Burnett, who was it doing most of the talking?

A. Coach Butts was.

Q. Do you recall whether or not this information was or this discussion was in question-and-answer form?

A. Some of it was; yes, sir.

[fol. 191] Q. And some not?

A. Some not.

Q. Was it given with some hesitation or reluctance?

Mr. Lockerman: Your Honor, please, I don't think he ought to try to interpret—

The Court: Yes, sir; that is a conclusion; I sustain the objection.

By Mr. Cody:

Q. What did you do with the notes, Mr. Burnett? What happened after this conversation took place as far as you were concerned?

A. I hung up the phone and sat there for about twenty or thirty seconds, and then I picked the phone up and called the Communications International Office, and it was answered by Mr. Milton Flack.

Q. What did he say?

A. And I asked Milton—

The Court: That is hearsay; I will let him state he called Milton Flack, but anything he might have asked him would be hearsay.

By Mr. Cody:

Q. What number did you call him at?

A. Jackson 5-3536.

Q. That is the one you had been trying to get?

A. Yes, sir.

Q. How long had you known Wallace Butts?

A. I didn't really know Coach Butts. I had met him on [fol. 192] one occasion. I had never actually—I didn't actually know him.

Q. Did he have some connection with the same company for which you work?

A. He was on the Board of Directors.

Q. When did you have occasion to contact Bob Edwards, if you did?

A. This wasn't until January the 4th that I talked to him about this.

Q. Who is Bob Edwards?

A. He is a division manager for our company.

Q. Where does he live?

A. In St. Simons, Georgia.

Q. Did he go to the University of Georgia, if you know?

A. Yes; he did.

Q. Was he a football player?

A. He played football; I don't know how much football he played with Georgia.

Q. Did you contact him about these notes? Did you tell him about this conversation, and, if so, tell me—tell the jury what you told Bob Edwards.

A. On the 4th of January we had just had a two-day—

Mr. Schroder: If it please the Court, I think any conversation between this witness and some third party would be pure hearsay.

The Court: Yes, sir; I sustain the objection.

[fol. 193] By Mr. Cody:

Q. Did you later meet with Bob Edwards and Coach Griffith?

A. Yes, sir.

Q. Where?

A. At the Biltmore Hotel.

Q. When was that?

A. On Thursday, January the 7th, during the week of the Coaches' conference.

Q. Did you—what did you do with the notes on that day?

A. Gave them to Coach Griffith.

Q. Have you had the notes since that day?

A. No, sir; not until right now.

Q. You know what he did with them?

A. Turned them over to the Athletic Association.

Q. You have had—you have had no control, no possession over those notes since?

A. No, sir.

Q. Up until today?

A. That's right.

Q. Mr. Burnett, did you—did you later have a meeting with the University officials?

A. Yes, sir.

Q. About what date was that?

A. It was about—not quite—about a week after I met with Johnny Griffith. This was one, as I remember right, Thursday, the following week, about the twenty-fourth of January.

Q. I am not trying to pin you down to the exact date, but I want to get it as close as I can. About the 24th of January?

A. About the 24th of January.

Q. That would be 1963?

A. Yes, sir; this year.

[fol. 194] Q. Do you know if they had the notes with them at that meeting?

A. Yes; they did. I was shown the notes at that time.

Q. Who was at that meeting?

A. It was in the office of Mr. Cook Barwick, and present with Mr. Barwick was Dr. Aderhold and—who is president of the University, and a Mr. Bolton, who is on the athletic committee and Bob Edwards and myself.

Q. Mr. Barwick, the gentleman sitting at this table?

A. Yes, sir.

Q. Was that the only meeting you had with the University officials?

A. No, sir; I had subsequent meetings after this, two or three, if I remember right.

Q. Do you know the purpose of that meeting?

A. Do I know—

Q. Yes.

A. —or did I know?

Q. Did you know the purpose of it?

Mr. Schroder: If the Court please, if he knew the purpose it would have to be told to him by some other party.

The Court: Yes, sir; I think that would be a conclusion also; I sustain the objection.

By Mr. Cody:

Q. When was the second meeting that you had with the University officials?

[fol. 195] A. About a week later in Mr. Barwick's office, approximately a week or ten days later.

Q. At that first meeting did you or not sign an affidavit?

A. No; I did not on the first meeting.

Q. Did you give them permission to take a lie detector test?

A. Yes.

Q. When were you first asked to take—to make an affidavit?

A. At that same meeting.

Q. And that was given subsequent to the meeting?

A. Yes, sir.

Q. Where were you—did you sign it in Mr. Barwick's office?

A. Yes, sir.

Q. What did you say the date of the second meeting was with the University officials?

A. About a week or ten days, as I remember, after the first time I met them.

Q. Were you requested at that meeting—

A. Yes, sir.

Q. —to take a lie detector test?

A. I was.

Mr. Lockerman: Your Honor, please, I don't think he ought to go into the conversation at that meeting.

The Court: You can ask him whether he made an affidavit at that meeting; I sustain the objection.

[fol. 196] By Mr. Cody:

Q. Did you take a lie detector test at that meeting?

A. Not at that meeting.

Q. When was that?

A. I took the lie detector test during the first week of February about 4:30 in the afternoon.

Q. Who gave you that test?

A. A Mr. McManus or McMain.

Q. Did you go to him in response to the request that had been made of you?

A. Yes, sir.

Mr. Schroder: That request would be hearsay.

The Court: Yes, sir; I sustain the objection.

By Mr. Cody:

Q. After the affidavit was signed, Mr. Burnett, who did you give it to?

A. Mr. Barwick.

Q. Getting back to this telephone conversation for the moment of September the 13th, did you hear any mention made of any ticket sales?

A. No, sir.

Q. What about rule changes?

A. No, sir.

Mr. Schroder: What was that last question?

Mr. Cody: Rule changes.

[fol. 197] Mr. Schroder: Oh.

By Mr. Cody:

Q. Did you hear any mention made of any financial investments?

A. No, sir.

Q. Did you hear any mention made of a concern called Commercial Enterprises Incorporated?

A. No, sir.

Mr. Cody: I believe that is all for the moment, Your Honor.

The Court: All right, sir. Go ahead, Mr. Schroder.

Mr. Schroder: Please the Court, would it be out of order for me to inquire as to your idea of adjournment—for adjournment today?

The Court: If it is all right with counsel and the jury, I think we can run to 4:30 unless you—I am here, I can conduct it as long as you wish. We'll go ahead; we will run for twenty-five or thirty more minutes.

Mr. Schroder: Whenever it will be, I will not finish today.

The Court: I presume Mr. Cody will have some further questions on direct. If we don't finish with him, that is all right. We will go ahead right now.

[fol. 198] Cross examination.

By Mr. Schroder:

Q. Mr. Burnett, on September 13, 1962, it is your testimony, is it not, that you were in the office there on Eleventh Street of a concern known as Oral Hygiene, Inc.?

A. No, sir; Institute of Oral Hygiene.

Q. Institute of Oral Hygiene, Inc.?

A. No, sir; it was not a corporation.

Q. Who was your—was anyone associated with you in that business?

A. John Carmichael and Mr. Milton Flack.

Q. To what extent was John Carmichael an associate of yours in that business?

A. He was—he had an exclusive sales contract with a company called Sterilray, Incorporated, to merchandise a toothbrush sterilizer, an electronic toothbrush sterilizer.

Q. Was he the one that put the money into the business there known as the Institute of Oral Hygiene?

A. Yes; he was. Yes; he was.

Q. At the time he made his investment in that business, is it or not true that you and he were employees or associated with Foundation Life?

A. Yes.

Q. And the two of you took a leave of absence from Foundation Life to go into this sales agency handling the sterile toothbrush?

A. Yes.

Q. How long had you all been in that business after you left Foundation Life before September 13, 1962?

A. About two months at the most.

[fol. 199] Q. You have referred to the fact that a man named Milton Flack also had an interest in the Oral Hygiene—Institute of Oral Hygiene?

A. His interest was because he was the president of the Sterilray Corporation with which we had a sales contract.

Q. Did he have an office there in the space on Eleventh Street?

A. No; he did not.

Q. Did anyone—any gentleman or any man have any office space there other than you and John Carmichael?

A. No.

Q. On September 13, 1962, you say that you arrived at that office in the morning?

A. Yes.

Q. Was Mr. Carmichael at the office that morning?

A. No; he was not.

Q. Was he customarily at that office before you arrived?

A. Most of the time, yes.

Q. And when you got there on this particular morning you missed him and you tried to reach him over the telephone?

A. Yes; I did.

Q. You tried him at his home?

A. I recall I did.

Q. And you then tried him at this downtown International Communications office space in the building across the street here?

A. Yes.

Q. You did not know at that time that Milton Flack was in that office?

[fol. 200] A. No; I did not.

Q. Did you know where Milton Flack was at that time?

A. No; I did not.

Q. It was your idea, though, that you were calling only John Carmichael?

A. Either John or Milton. We check in with each other at that phone.

Q. You had no intention, then, of calling Carmichael only when you called the office of Communications International?

A. I was trying to locate either Mr. Carmichael or Mr. Flack to find out where Mr. Carmichael was.

Q. It was Mr. Carmichael you were looking for?

A. This was my intent; yes, sir.

Q. And your testimony is that in your efforts to dial the Communications International office you became connected in with this telephone conversation that you have talked about on direct examination.

A. Yes.

Q. Was there anyone in the office there at the time that you dialed the number?

A. No, sir; there wasn't.

Q. John Carmichael came in later?

A. Yes; he did.

Q. Did you ever get in touch with John Carmichael over any telephone, or did he just come into the office there where you were?

A. He just came into the office.

Q. After the telephone conversation was over and the parties had hung up, the parties hung up that you were listening to?

[fol. 201] A. Yes.

Q. And you said the line stayed open?

A. Yes.

Q. And you did have a conversation with the telephone operator?

A. Yes.

Q. You later, shortly after you hung up, I believe, the testimony is that you telephoned Communications International again?

A. Yes.

Q. Now, the notes that you were discussing with Mr. Cody that you say you took at the time this telephone conversation was being listened in on by you, you discussed the contents of those notes later with Mr. John Carmichael?

A. Yes; I did.

Q. And after your discussion of those notes and with what you had heard between the two parties on the phone with Carmichael, you then later on in the afternoon discussed those with Mr. Flack?

A. Yes, sir.

Q. You discussed them first with Carmichael alone?

A. Yes.

Q. And then later in the afternoon you ran into or Mr. Flack came by; is that correct?

A. He came by the office.

Q. And you at that time talked about them in the office of both Mr. Flack and Mr. Carmichael?

A. Yes, sir.

Q. All right, sir. After talking with Mr. Flack and Mr. Carmichael, the three of you decided to just forget the whole thing?

[fol. 202] A. This is right. It was Mr. Carmichael's advice, that we forget about it.

Q. Did Mr. Flack advise you also to just forget about the whole thing?

A. Yes; he agreed with Mr. Carmichael.

Q. All right, sir. And you did proceed to forget about the whole thing?

A. I tried to; yes.

Q. You took the notes, as you called them, to your home and hid them away?

A. I just put them in a box in a dresser drawer.

Q. And you did not, or did you, discuss anything about this with anybody from September the 13th until—with some other party until, I think you said, January the 4th?

A. I don't recall discussing it with anyone or mentioning it to anyone.

Q. Don't you think you would have recalled it if you did?

A. I think I would have.

Q. There is nothing magic about January the 4th; you are recalling you discussed it at that time?

A. What do you mean "magic"? I don't understand.

Q. There is nothing about January the 4th that would make you remember discussing it on that day—

A. That fact that we—

Q. —and yet not before that?

A. The fact that we had a meeting at the office, Mr. Schroder, and at the end of the meeting I was sitting in the office with Mr. Edwards, and we got into general conversation with each other, being close friends; I distinctly remember that day.

Q. All right, sir.

[fol. 203] A. I don't recall discussing this with anyone else in between.

Q. All right, sir. Now, you have indicated that in this conversation that you were listening to some reference being made to a telephone call that was to be placed by the two parties, or shall we say by one of the parties to the other party on a following Sunday—

A. Yes, sir.

Q. —September the 16th?

A. Right.

Q. That is all that you remember? Certainly your notes don't show anything about what was to be said at that conversation, do they?

A. No. Mr. Schroder, several times in the conversation Coach Bryant would ask questions, and Coach Butts said "I don't know." And a couple of times Coach Bryant said "Can you find out?" And he said, "I will try." And they ended up the conversation with—by him saying, "Will you be home Sunday, Wally?" And he said, "Yes." He said, "I will give you a call then."

Q. Do you remember having made the statement that you did not hear Coach Bryant tell Coach Butts that Coach Bryant wanted to wait until after Coach Butts had seen the last week scrimmage before renewing the conversation next Sunday?

A. That wasn't mentioned.

The Court: What are you reading from, Mr. Schroder?

Mr. Schroder: A statement that was made.

[fol. 204] The Court: In the deposition?

Mr. Schroder: It was a statement that was made by—a statement made by the witness before Gene Cook. He said the statement was not made, so I don't have any problem. It would have been a previous contradictory statement if he said no, he didn't say it.

The Court: We don't want to get into Mr. Cook.

Mr. Schroder: Mr. Cook's report has nothing to do with this case; I understand that.

The Court: Go ahead.

Mr. Schroder: That report has nothing to do with this trial, even mentioning it. That is the reason I didn't identify it.

The Court: All right, sir.

By Mr. Schroder:

Q. It is your testimony today, Mr. Burnett, that there was nothing said in the telephone conversation to which you were listening that would even intimate that Coach

Butts was to be called by Coach Bryant after Coach Butts had had an opportunity to observe the last week of scrimmage?

[fol. 205] A. Well, all I know, Coach Bryant asked him would he be home on Sunday, and Coach Butts said he would, and he said, "Fine, I will give you a call then." And that is all I heard him say about the telephone call.

Q. Your answer to my question, then, would be there was no intimation of that?

A. Of a scrimmage, no.

Q. Thank you, sir. In the conversation that you say you overheard between Coach Butts and Coach Bryant, was there any mention made of gambling?

A. No.

Q. Was there any mention made of either party betting on the outcome of the game?

A. None at all.

Q. Was there any mention made about how many points one team might be favored over the other to win by?

A. No, sir.

Q. Was there any mention made about betting on odds?

A. No, sir.

Q. As a matter of fact, did either Coach Bryant or Coach Butts say anything in that conversation that you say you overheard to indicate that what they were discussing was to be done or not done in the Georgia-Alabama game coming up the following Saturday?

A. You will have to say that again; I don't understand what you are saying.

Q. In this conversation that you were listening in on, I want you to state to the jury and to the Court whether or not either Coach Butts or Coach Bryant, in relation to anything they might have been talking about, said that this [fol. 206] was to be done or used or that this was not to be done or not used in the forthcoming game between the University of Georgia and Alabama?

A. Well, Mr. Schroder, Coach Bryant asked the question at the onset, "Do you have anything for me, Wally?" and Coach Butts proceeded to give plays of the team—

Mr. Schroder: If the Court please—

A. (By the witness) —of the plays that would be used.

Mr. Schroder: Just a moment. The answer is not responsive, and it is a conclusion when he says he gave plays. Plays definitely are a conclusion by the witness as to what—

Mr. Cody: He hasn't finished.

The Court: Aren't you asking for an interpretation yourself, Mr. Schroder, which I have previously ruled out?

Mr. Cody: I think he ought to let him answer the question, Your Honor, and not stop him in the middle of an answer.

Mr. Schroder: I have no objection to him answering the question.

The Witness: Coach Butts proceeded to give the plays that I was—that I wrote down at the time, and at no time in the conversation did Coach Bryant ever mention any— [fol. 207] thing about Alabama plays, and the two teams were playing each other a week later.

By Mr. Schroder:

Q. The question, Mr. Burnett, is simply this—well, let me ask you this. Do you remember when your deposition was taken in the office of your lawyer, Mr. Howard?

A. Yes, sir.

Q. On June 3, 1963?

A. Yes, sir.

Q. Being present were myself and Mr. Lockerman and Mr. Smith for Coach Butts, and Mr. Bondurant for the Post?

A. Yes, sir.

Q. You remember at that time this question being asked you?

A. I don't remember the particular question.

Q. I haven't asked it.

The Court: He is going to relate the question to you.

By Mr. Schroder:

Q. Question: "Was there anything said by either party directly that what they were talking about was to be done or not done in the Alabama-Georgia game, or did you just conclude that?" Do you remember giving this answer—

A. I imagine I probably concluded it. They didn't—he didn't say they were going to do this Saturday in the Alabama game, no.

Q. In other words, what you have stated is a conclusion on your part?

[fol. 208] A. I imagine so; yes, sir.

Q. Was there anything at all in the conversation that you say you overheard which does not appear in your notes that you attach any significance to, or do your notes contain—when you say "plays"—

A. There were things—

Mr. Cody: Your Honor, that calls for a conclusion. He has testified to the facts as he knows them.

The Court: I believe Mr. Schroder asked him in his question, was there anything that he remembered that wasn't in his notes that he could testify to.

Mr. Schroder: That's right.

Mr. Cody: He has already testified the thing—

The Witness: There are a lot of things I can't testify because I can't remember them in detail.

The Court: Just a moment.

The Witness: I'm sorry.

The Court: I think he is entitled to go further and ask him is there anything further in his notes—not in his notes [fol. 209] to which he can testify. I think that is proper cross-examination.

Mr. Cody: Anything else besides what he has testified to; yes. I didn't direct my objection towards that.

The Court: What did you direct your objection to?

Mr. Cody: He said, was there anything in the notes—in the conversation that he heard other than what is in those notes. That is the substance of his question. He has al-

ready testified to things that have taken place in the conversation.

The Court: Yes, sir; but I don't know whether he has testified to everything.

Mr. Cody: He hasn't. Now, if he will ask him—if his question is directed towards what else—

The Court: I think that is what his question was. Ask your question again, Mr. Schroder.

By Mr. Schroder:

Q. Mr. Burnett, you say that you made certain notes of what you consider to be significant that was discussed in the telephone conversation that you were listening in to; is that correct?

[fol. 210] A. No, sir; not exactly. I was taking notes, Mr. Schroder, as they were talking. What was significant and what was insignificant at the time I had no way of knowing. I was writing the notes as fast as I could, but not taking shorthand, abbreviating when I could. There were things that were said as I was writing that I didn't catch all of it and didn't write down.

Q. Will you now, please, sir, state to the Court and jury what you remember being discussed between the two parties that is not included in your notes?

A. Other than what I have already testified to I can't remember.

Q. You have testified today to everything you remember?

A. That I can possibly remember.

Q. That you remember hearing in that telephone conversation?

A. That I can remember; yes, sir.

Q. When you were discussing this on January the 4th, over three months after September 13, 1962, did you at that time have in your possession the notes which you have in your hand there now?

A. No; I did not.

Q. You did not then when you were talking to Bob Edwards about them have the notes with you?

A. No.

Q. Have you ever shown those notes to Bob Edwards?

A. Yes; I did.

Q. When did you show them to Bob Edwards?

A. Just prior to going down to see Mr. Griffith, Coach Griffith.

[fol. 211] Q. You went down to see Coach Griffith at the request of Bob Edwards?

A. Yes.

Q. You went down to see Coach Griffith on January the 14th, 1963.

A. No, sir; it was—I think it was around the 14th. It was during the week of the Coaches' Conference, 17th or 18th; it was during that week; it was in the second week after I had talked to Bob.

Q. Well, if I stated the meeting took place on January 4, 1963, at the Biltmore, according to the information of others, you would not say I was wrong, would you?

A. No, sir; as I say, I don't remember the exact dates. They were during the week of the Coaches' Conference, the second to the last day.

Q. My point is really not as closely connected with the date of January 24th as it is with this. You did not show those notes which you have in your hands now, or any copy of those notes to Bob Edwards until within—until a matter of two weeks after you first talked to him about it on January the 4th?

A. This is right.

Q. In the Saturday Evening Post article—before I—let me withdraw that question, please. When Frank Graham, Jr. was in Atlanta, you met him, did you not?

A. Yes; I did.

Q. Did he hold himself out as being a representative of the Saturday Evening Post when you were talking with him?

A. I was introduced to him as a writer representing the Post; yes, sir.

[fol. 212] Q. Well, you knew when you were talking to him who you were talking to?

A. Yes, sir.

Q. When you were talking to Frank Graham, did you have your notes with you?

A. No; I did not.

Q. You were talking to him purely from recollection?

A. Memory; yes.

Q. Memory. Now, he was here in February, 1963?

A. Yes, sir.

Q. About February the 21st?

A. Right.

Q. Did you tell him you didn't have your notes?

A. Yes.

Q. Did you make it plain to him you were speaking solely from your memory?

A. Yes, sir.

Q. When he was here, was there an agreement reached as to what you were selling your story to the Post for?

A. No, sir; I wasn't selling my story to the Post.

Q. Well, did you receive money for it, sir?

A. Later I did.

Q. Was it understood when he left here that he was to pay money for it?

A. Not to me; no, sir.

Q. Did you receive money for it?

A. Later; yes, sir.

Q. How much money did you receive for it?

A. Five thousand dollars.

[fol. 213] Q. To your knowledge did you ever send to Frank Graham the notes that you are holding in your hand there before he wrote his article and the Saturday Evening Post published that article?

A. No; I did not.

Q. The article, therefore, was published without the benefit of your notes?

A. That is true, as far as I know.

Q. The first sentence in the article, relying upon your memory, I believe, is an error in that it starts out with even the wrong date for this alleged interception of the telephone conversation, does it not?

A. I don't know, Mr. Schroder; you will have to read the first sentence.

Q. The first sentence is: "On Friday morning, September 14, 1962, an insurance salesman in Atlanta, Georgia, named George Burnett picked up the telephone and dialed the number." That is not true?

A. No; it was Thursday, January the 13th.

Q. Yes, sir. You mean September?

A. I mean, September the 13th.

Q. At the—do you know whether Mr. Graham asked to look at any film of the game while he was here?

A. No; I don't.

Q. Did you, in a discussion did you hear any discussion between him and anyone else in your presence about his sports editor wanting him to check the film?

A. No, sir.

The Court: Aren't we getting into hearsay here? Now, I excluded hearsay over here. If you are going into the conversation with others I am going to let Mr. Cody get back into it.

Mr. Schroder: Your Honor, this is Mr. Graham of the Saturday Evening Post.

The Court: Yes, sir; I know it is Mr. Graham, but any conversation with Mr. Graham—

Mr. Schroder: Would be inadmissible against the Post? That is their man talking.

The Court: You can question Mr. Graham, but this is hearsay insofar as Mr. Burnett is concerned. Go ahead. There is no objection.

Mr. Schroder: Burnett is not a party. This is the Post's agent making the—

The Court: Go ahead; there is no objection.

Mr. Schroder: All right.

By Mr. Schroder:

Q. At the time that Mr. Graham was in Atlanta, on how many occasions did you see him?

A. Three times.

[fol. 215] Q. That would have been some—about February the 21st?

A. 22nd.

Q. 22nd? Have you seen Mr. Graham since February 21st or 22nd?

A. I saw him on February 23rd also.

Q. That was the same trip, though, that he was here?

A. Yes, sir.

Q. Have you seen Mr. Graham since he left Atlanta—

A. No, sir.

Q. —on that trip?

A. No.

Q. Have you talked with Mr. Graham at all since he was here on that trip?

A. No, sir; I have not.

Q. Did Mr. Graham submit to you or did anyone in connection with the Saturday Evening Post submit for you to correct this article that they published in March, March the 23rd?

Mr. Cody: Your Honor—

The Court: Yes, sir.

Mr. Cody: —he is getting into a subject that is not covered in direct examination, and I think the rule of this Court, the Rules of Civil Procedure provide that cross-examination is limited to the subject matter of direct examination.

[fol. 216] The Court: I am assuming he is going into this for the purpose of punitive damages.

Mr. Schroder: Yes, sir; it is.

The Court: And I think it is a question of whether or not there would be any negligence or disregard in checking the article. I will let him ask that question. Overrule the objection.

By Mr. Schroder:

Q. Did you hear the last question? Do you remember what it was?

A. Was I asked about the article prior to it being published? Is that it?

Q. Did anyone connected with the Saturday Evening Post send to you a copy of the article before it was finally published by the Saturday Evening Post?

A. No.

Q. Did anyone connected with the Post talk with you about the accuracy of the statements appearing in the article that were attributed to you?

A. No.

Q. The Post article has been read previously today. Now, I want to ask you about this which appears right in the first column which has been attributed to you, and I want to ask you if you told Mr. Frank Graham that this was so, and to put it in the article. This is quoting you; I am in the first column, quote: "Butts also said"—now, [fol. 217] this is relating what you told Graham you overheard on September the 13th, 1962. "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant that he would drop back to pass. If they were together it meant he was setting himself to spin and hand off." Did you tell Mr. Graham that you heard Coach Butts make that statement to Coach Bryant?

A. No, sir; I didn't.

Q. That is an inaccurate quotation, a misquotation on his part that he has attributed to you?

Mr. Cody: Your Honor, he is arguing this case now, and I want to—

The Court: I think you can ask him did you tell him that.

Mr. Cody: And I want to, again, insist on my objection that he is getting into a subject matter that was not covered by the direct examination, and I think the Rules provide he is limited.

The Court: I think he can cover that.

Mr. Cody: I understand Your Honor's ruling, but I want to make my objection.

[fol. 218] Mr. Schroder: To make the record perfectly clear on this, Your Honor, I intend to prove by this witness and others that the article is replete with misquotations and inaccuracies, and I am doing that for the sole purpose of showing how reckless the Saturday Evening Post was in publishing this article.

The Court: What he is objecting to is arguing the case, Mr. Schroder. I think you can ask him did he tell him that, and I think his answer was no. But your other question, I think, was properly objectionable. Go ahead, sir. I will permit the line of questioning. I think it is proper.

Mr. Schroder: As I understand, then, the record does show that Mr. Burnett did not say to Graham the quotation that Graham put in the article that related to the position of the quarterback's feet.

The Court: Rakestraw.

Mr. Schroder: Rakestraw.

The Court: All right. Was there any mention of Rakestraw in the conversation as you purportedly heard it?

The Witness: Nothing about the feet; no, sir. This I [fol. 219] didn't know anything about. I didn't say anything to Mr. Graham about Mr. Rakestraw's feet.

By Mr. Schroder:

Q. Now, in the article published on March 23, in the second column on page 81, the following appears: "Burnett knew—" I am quoting from the article— "Burnett knew, too, that Butts recently had been involved in a disastrous speculation in Florida orange groves." Did you say that to Mr. Graham?

A. Mr. Schroder, I don't recall using those words, "it was a disastrous speculation." I made the remark that I knew Coach Butts had been in an orange grove speculation in Florida that didn't prove too successful. Now, I don't know I used the word "disastrous" or not.

Q. The word you used was "had not been too successful"?

A. Right.

Q. But you did not tell him that it was "a disastrous speculation?"

A. I may have; I don't remember using the word "disastrous."

Q. On page 82, column 2, at the bottom, the following I will quote from the article. "Griffith—" meaning Johnny Griffith "—went to University officials, told them what he knew, and said that he would resign if Butts was permitted to remain in his job." Did you give that information to Frank Graham?

A. No. I told Mr. Graham that at the time Coach Griffith was given the information in the hotel and shown the notes, that he made the remark that "we knew something had happened," that somebody had given away their plays; "sold them out" is the words.

[fol. 220] Mr. Schroder: Your Honor, that is not responsive to the question.

The Witness: I am getting to it. You asked me about what Coach Griffith said, Mr. Schroder. Coach Griffith made the remark to Bob Edwards and I, said if something like this was allowed to happen in football he wanted out of it and he would resign, and that he was going to take this to the athletic officials, and if it wasn't straightened out he would resign.

By Mr. Schroder:

Q. Let me ask you if you remember this question being asked you when your deposition was taken and you were under oath at that time too, weren't you?

A. Yes; I was.

Q. All right. Question: "The same article in the Post states this on page 82: 'Griffith went to University officials, told them what he knew, and said that he would resign if Butts was permitted to remain in his job.' Do you know where the writer of the article, Frank Graham, got

that piece of information?" Your answer: "No, sir; I don't."

A. The answer is I don't; I don't know where he got it as far as going to the officials was concerned, Mr. Schroder.

Q. Is that your explanation of the answer you gave a moment ago?

A. Is what?

Q. Is what I just read, is that a true answer?

A. I said I don't know that Mr. Griffith told the officials this; no. He made the remark—

Q. The question—

A. He made the remark to Mr. Edwards and I if this [fol. 221] were allowed to continue in football he was going to get out of it.

Q. Was Mr. Graham present when he said that?

A. When Mr. Griffith said it?

Q. Was Mr. Graham, the author of the article, present?

A. I told him this.

Q. That Griffith was going to resign?

A. No, sir; Mr. Griffith had stated if this could happen in football he wouldn't have any part of it.

Q. Did you hear Mr.—did you tell Mr. Graham Mr. Griffith went to University officials and told them what he knew and said he would resign if Butts was permitted to stay on?

A. No, sir.

Q. That is the simple question I asked you to start with.

A. All right, sir.

Q. All right, sir. It was your information—do you know of anyone else supposed to have overheard this conversation?

A. Which conversation, the telephone or the one with Johnny Griffith?

Q. The telephone conversation?

A. No, sir; I don't.

Q. Did you say anything to the Saturday Evening Post about this being the story of a college—I mean, a fixed football game?

A. No, sir.

Q. Did you say anything to the Saturday Evening Post that this was a rigged football game?

A. No, sir.

Q. Did you say anything to the Saturday Evening Post about this game having been thrown?

A. No, sir.

[fol. 222] Q. Did you say anything to the Saturday Evening Post about this having been a sell-out?

A. No, sir.

Q. Did you say anything to the Saturday Evening Post about Coach Bryant and Coach Butts being corrupt men?

A. No, sir.

Q. When you met with Mr. Cook Barwick seated here the first time, the statement which you made in his presence and in the presence of those others that you have identified here, that statement was recorded, was it not?

A. Yes; it was.

Q. That is the first time you had met Mr. Cook Barwick, was it?

A. Yes, sir.

Q. That was the first time you had met Mr. Aderhold?

A. Yes, sir.

Q. And the other gentleman named Mr. Bolton?

A. Yes, sir.

Q. That was the first time you had indicated any knowledge at all of the matters that you have testified here to today to any one of those three?

A. Yes; it is.

Q. Mr. Barwick asked you some questions, numerous questions at that time, didn't he?

A. Yes, sir.

Q. One of those questions was: Did you have any sort of record, wasn't it?

A. Yes; he did.

Q. And you answered him that you did not, didn't you?

A. That's right.

Q. But you told him to go ahead and investigate?

[fol. 223] A. Yes, sir.

Q. And later it turned up that there was a record, wasn't it?

A. Yes, sir.

Q. And that is when you testified a moment ago or at some time during the proceedings that they begin questioning you about that or what was in the article, excuse me, started questioning you about that, and you became alarmed or became frightened, and said, "Am I on trial?"

A. That is what is in the Post article.

Q. Yes, sir.

A. Yes, sir.

Q. That is all true, isn't it?

A. Yes, sir.

Q. Was there any reason for your denying that you had any record when you first talked to the University of Georgia people and Mr. Barwick about this matter?

A. Other than I didn't want to get involved in it if I didn't have to. I wasn't under oath; I was just answering direct questions.

Q. You don't mean by that you are free with the truth when you are not under oath?

A. I am not indicating anything of the kind.

Q. The reason you said you didn't have a record, you didn't want to get involved and weren't under oath?

A. I didn't say "involved". I didn't want to get—start public announcement about some problems that I had had that I have since paid my debt on.

Q. Your friend, Milton Flack, did he get paid anything in connection with this story by the Saturday Evening Post?

A. I don't know.

[fol. 224] Mr. Cody: Your Honor, I think that that—that would come from someone else.

The Court: He can state if he doesn't know; that is a proper answer.

Mr. Schroder: If the Court please, I have the voucher issued by the Saturday Evening Post, if there is any doubt about it.

Mr. Cody: Go ahead.

The Court: He can ask Mr. Flack or whoever.

By Mr. Schroder:

Q. You don't know?

A. I don't know the particulars involved in any payment to Mr. Flack; no; something about him getting some money to not talk about the story.

Q. All right, sir. The lawyer who was representing you and probably—is Mr. Pierre Howard still representing you?

A. Yes, sir.

Q. He was paid a fee by you?

A. Yes; he was.

Q. A thousand dollars?

A. That's right.

Q. Do you know what that was for? What did you pay him a thousand dollars for?

A. For legal advice and legal fees.

[fol. 225] Q. In connection with this story?

A. In connection with the work he was doing for me.

Q. In connection with this story?

A. Representing me in the things I knew were going to come from this; not from the story, no; not for any part in the story. This was legal fees.

Q. Did you owe him any fees for any services that he had rendered you before you got involved with him in this so-called story?

The Court: How could that be admissible here?

Mr. Cody: I think he knows, Your Honor.

Mr. Schroder: I have him on cross-examination.

The Court: You have him on cross-examination; I don't think that is admissible unless you can show me a reason why it should be. I don't think it should be. I mean, something that might have taken place before, some contract he might have in some other case, I don't think that would be admissible.

Mr. Schroder: The contention is and can be proved that the thousand dollar payment was for services rendered in this story and this story alone which I indicated at the outset, if it please the Court, and I am so contending, this was sort of what we lawyers call on a contingent basis. "I will pay you a thousand dollars now and if your story, [fol. 226] after I get to talking to you, is reproduced, I will then pay you three thousand dollars."

The Court: I thought we were on Mr. Pierre Howard's fee.

Mr. Schroder: We are. He was in the middle of this representing both parties.

The Court: He can testify as to what he paid Mr. Howard.

Mr. Schroder: That is all I was asking.

The Court: He testified five thousand dollars. Anything else?

Mr. Schroder: About payments, no, sir; nothing further with him on payment.

The Court: All right, sir.

By Mr. Schroder:

Q. The Saturday Evening Post article makes the statement that you did record all that you heard in connection with the telephone conversation that you were listening in on; that is inaccurate, is it not? On page 81, the bottom, column 1, "Some of the jargon stranger still, but he recorded all that he heard."

A. No, sir; I have already testified that I didn't—couldn't get it all written down. There were some other [fol. 227] things, and I was abbreviating and making sentences short as I was copying it down.

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By Mr. Schroder:

Q. During the examination yesterday, Mr. Burnett, we were referring, I believe, to the fact that the office there

on Eleventh Street of the business known as the Institute of Oral Hygiene was—the business owned by John Carmichael?

A. Yes; it was.

Q. And you had known John Carmichael for how many years before you went to work for him?

A. Approximately two years.

Q. About two years?

A. Yes.

Q. And during the time that you knew Mr. Carmichael and before you left and went with him to the Institute of Oral Hygiene he was with you at the Foundation Life?

A. Yes, sir.

Q. Was he your boss at the Foundation Life?

A. He was my district manager.

Q. That is what I meant; he was your superior?

A. I reported to him.

Q. You and John Carmichael were fairly friendly or good friends?

A. Yes, sir.

Q. The office there on Eleventh Street had—did it have a private office in it?

A. Yes; it had one—one private office which was Mr. Carmichael's office.

Q. Now, it was in Mr. Carmichael's office, was it not, that you were listening in on this telephone conversation? [fol. 228] A. Yes, sir.

Q. You were seated at Mr. Carmichael's desk?

A. Yes, sir.

Q. Now, during the course of this listening in by you on this telephone conversation, did Mr. Carmichael come in?

A. No; he did not.

Q. You are sure that he did not come in before you were through?

A. Yes, sir.

Q. Could you see the—you were in the private office, you say?

A. Yes; I was.

Q. Did you see into and through the agency room which was immediately adjacent to that office?

A. No; I could not.

Q. Would it be your testimony, then, that Mr. Carmichael could not have been in the agency room, being a place that you could not see?

A. I didn't hear anyone come in. He did not come in the private office, and I would have heard him, I am sure, come in the front door. He did come in subsequently with a paper sack with two cups of coffee in it.

Q. You and Carmichael—this was how long after you say that you finished?

A. Some, approximately an hour to an hour and a half.

Q. You and he have talked about this incident on many occasions?

A. Not on many occasions.

Q. On several occasions?

A. Several; yes.

Q. And you do know that he has since told you that he was in the office when you were?

[fol. 229] A. No; he has not told me this.

Q. But you know he has told this?

A. Yes, sir.

Q. But your testimony is that he was not there?

A. That is right.

Q. And you say now that it was an hour or an hour and a half after that?

A. Approximately.

Q. It could not have been thirty minutes?

A. It could have been anywhere from thirty minutes to an hour and a half.

Q. All right, sir. When you were on the telephone and heard these two voices, you knew at that time that you were listening to two people talk on their telephones and that you were not intended to be listening, didn't you?

A. I realized that.

Q. But you did continue to listen in anyway, didn't you?

A. That's right; that's right.

Q. The testimony, I believe, yesterday by you indicated that the party being called was not at that time near the phone but was out on the field?

A. That is what I heard a female voice say.

Q. That Coach Bryant was out on the field?

A. This was the words that she used.

Q. Well, don't—this was in the morning that you were listening in on this call?

A. Yes; it was.

Q. Well, don't you know, as a matter of fact, that there was no practice in the morning, football practice?

A. I don't know as a matter of fact when they practiced, Mr. Schröder.

Q. Well, this was the coach that you were talking about, [fol. 230] that you have just referred to, wasn't it?

A. Yes, sir.

Q. And the field was the practice field, was it not?

A. I have no idea.

Q. Didn't you at one time say it was the practice field?

A. I don't recall. I said the practice field; I may have used the word "practice field"; I don't remember.

Q. Well, you are a former football player; you know what the word "practice field" means, don't you?

A. Yes.

Q. That is where football players, during football season, practice, isn't it?

A. This is true.

Q. When Carmichael and you had your discussion about what you say you overheard, the remark was made, was it not, that, "well, if there's anything wrong about this, let's bet on the outcome?"

A. No; this remark was not made.

Q. When was the remark made about betting on the game?

A. The only remark about betting was made, said, "If you are going to bet, which way would you bet?"

Q. All right, sir, I will buy that. Who made the remark, "If we want to bet on the game, which team would we bet on?"

A. I don't recall. As I remember, Mr. Carmichael said to me, "How would you know if they were going to go for

a high score or a low score with this intimation if you were going to bet on it?" There was never any serious discussion by any of the three of us about betting on the football game.

[fol. 231] Q. And that was because you told them that you wouldn't know yourself which way the teams were going?

A. No, sir; I didn't say this.

Q. What did you say, sir?

A. The three of us agreed on this; I don't know which one prefaced it first, but the three of us agreed who would know.

Q. Who would know? And that was based upon what you say that you heard one coach tell the other on the telephone?

A. That's right.

Q. All right, sir. And insofar as the three of you were concerned, you were the only one that heard—overheard anything that was said on that telephone?

A. That's right.

Q. The first time that you discussed this incident with your lawyer, Mr. Howard, was when?

A. On the 21st of February.

Q. On the 21st of February, 1963?

A. '63.

Q. That was in the morning or in the afternoon?

A. In the late afternoon.

Q. The Saturday Evening Post representatives were in Atlanta on that very day, were they not?

A. Yes; they were.

Q. As a matter of fact, they had come in on the—on February the 20th, hadn't they?

A. I have no idea when they came in.

Q. But Mr. Howard told you they were here?

A. Yes; he did.

Q. You knew they were here?

A. Late that afternoon when I went to his office and told him what had happened.

[fol. 232] Q. They were already here when you first—
when you say you first told him—

A. Yes.

Q. About the incident?

A. Yes.

Q. Do you know what they were here for?

A. Haven't the slightest idea.

Q. They didn't discuss it with you while they were here?

A. No; they did not.

Q. Did you talk to them at all?

A. With whom?

Q. The Saturday Evening Post people.

A. Yes; I did.

Q. What did you all talk about?

A. About the story and what I had overheard, and the fact that I was a little disturbed at my last meeting in Mr. Barwick's office, and that I decided I wanted this story told and told in the way it happened, and my story about my bad checks, as is in the Post article, to be told before I was maligned.

Q. Then they were here to get your story?

A. I have no idea why they were here, Mr. Schroder.

Q. Did you discuss anything with them other than your so-called story? Did you discuss business with them of oral hygiene?

A. Mr. Schroder, when I went to Mr. Howard's office and told Mr. Howard what had happened—

Mr. Schroder: If the Court please, may he answer my question?

[fol. 233] The Court: I think we can clarify it a little bit. He is talking one thing and you are talking another. Why don't you ask him when he first told him?

Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. When did you first talk to the people from the Saturday Evening Post?

A. Friday evening, about 7:00 or 7:—about 7:00 o'clock Thursday evening on the 21st, about 7:00 o'clock, at their motel is the first time I met the Post people and told them the story.

Q. And their motel was here in Atlanta?

A. Yes, sir; it was.

Q. And did you discuss with them business in general, or did you discuss with them just this so-called story?

A. I discussed with them just this story.

Q. All right, sir.

Examination.

By the Court:

Q. How did they know you knew about the story? How did they know about the story?

A. Mr. Howard told me that Mr. Beddow and the Saturday Evening Post people were in town and this would be some people to talk to who would be willing to listen to a story if I wanted to give them one. I decided, Judge, on his advice that it was time for me to get this story out before people were trying to malign me totally in a different way, and he said he knew they were in town [fol. 234] and would be willing to listen, and he called them and made an appointment for me, and we went to the motel.

Q. May I clarify something? Had you talked to Mr. Howard before?

A. No, sir.

Q. How did he know what you knew about this story?

A. He didn't until I walked into his office.

Q. That afternoon?

A. Yes, sir. He had heard the story from Mr. Carmichael before, but I didn't know he had heard the story.

The Court: I didn't connect it up. I didn't mean to interrupt your line of questioning.

Mr. Schroder: I thank you for the help.

Cross examination (continued).

By Mr. Schroder:

Q. The people that you talked to at the motel were Frank Graham, Jr.?

A. Yes; that was one of them.

Q. Who subsequently wrote the story?

A. Yes, sir.

Q. Supposedly based on information that you gave him?

A. Yes, sir.

Q. Also present in Atlanta that time with Mr. Graham was the Saturday Evening Post lawyer in Birmingham representing the Post in the libel suit that Coach Bryant [fol. 235] had filed against them maybe a month before this?

A. That's right.

Q. His name was Mr. Beddow? He was over here?

A. Yes, sir.

Q. With Mr. Graham?

A. Yes, sir.

Q. There was also from Birmingham a private investigator who was working on the Byrant against the Post lawsuit in Birmingham that had been filed some months before all this came up, a Mr. Bodecker?

A. I met a Mr. Bodecker; I didn't know who he was or his connection.

Q. He was with Mr.—

A. He was with Mr. Beddow.

Q. He was with Mr. Beddow, the Birmingham lawyer?

A. Right.

Q. And you stayed there in the room at the, I believe you said, the Heart of Atlanta Motel?

A. Yes; it was the Heart of Atlanta.

Q. And that was Mr. Frank Graham's room?

A. I don't know whose room it was.

Q. Well, you stayed there with these gentlemen for some minutes or some period of time that evening?

A. About an hour to an hour and a half, as I recall.

Q. And you then met with Mr. Graham again the following day?

A. Yes; the following morning at Mr. Howard's office.

Q. And how long did you meet with them on that occasion?

A. We were together about another hour or two in Mr. Howard's office.

[fol. 236] Q. Did you see Mr. Graham later that afternoon?

A. No, sir; I don't recall seeing him at all that afternoon.

Q. Did you see anyone else hired or working for the Post that afternoon?

A. No; I did not.

Q. That would have been the 22nd?

A. Right.

Q. Then the next day did you see Mr. Graham?

A. I saw Mr. Graham the next morning very briefly again in Mr. Howard's office.

Q. In Mr. Howard's office?

A. Right.

Q. That was the 23rd?

A. That was the 23rd.

Q. And I believe your testimony yesterday was that you have not, since the 23rd, seen Mr. Graham?

A. Well, this is true, but the afternoon of the 23rd I drove him to the airport and spent some three and a half hours at the airport waiting for his plane and talking with him.

Q. All right, sir. He had not written any story then to your knowledge, had he?

A. No.

Q. Since you last saw him on February 23rd at the Atlanta Airport, have you seen him or talked with him in any—with respect to anything?

A. I have not seen him and I don't recall that I have talked with him. I have received a letter from him, but I have not talked with him or seen him.

Q. Did your letter pertain to this story before or something he was putting in the story before he published it?

A. No, sir; he was forwarding to me a letter from a [fol. 237] television station in Indiana regarding an article; this was after the article was published.

Q. Your testimony is, then, that you have had no communication with Frank Graham other than the letter that you have just told us about since he left here February the 23rd?

A. That is true.

Q. I don't know whether I asked you this yesterday or not, but have you had any communication of any sort with anyone else employed by the Saturday Evening Post after February the 23rd and before this magazine was published in this issue of March 23?

A. No, sir.

Mr. Schroder: If it please the Court, the article has been tendered and, I believe, admitted in evidence.

The Court: Yes, sir.

Mr. Schroder: This witness has already testified yesterday about a quotation that he did not give the author which the author indicated in the article that he did give to him, and in order to make it photographic, so to speak, for the jury, I have had that article, the entire article blown up, and I would like the permission of the Court to have it unraveled and placed here where they can—

The Court: You mean you are—

[fol. 238] Mr. Schroder: I will state in my place it is authentic.

The Court: You are just going to blow it up?

Mr. Schroder: I had it blown up by the Atlanta Blueprint Company.

Mr. Cody: I don't think it is proper, Your Honor; the article itself is in evidence; I don't know.

The Court: Would you object to it being demonstrative?

Mr. Cody: I don't know what he is apt to do with it.

Mr. Schroder: This is the article forming the basis of this libel suit. There are inaccuracies in it, and I think it ought to be here where the jury can see it when the witnesses testify on the stand about the manner in which they

have been misquoted, where the jury can see right here in front of them what the misquotations are, what the inaccuracies are, and have it vividly clear here before it or rather than have them memorize it or pass out copies to them.

Mr. Cody: I think that is entirely improper, Your Honor, what he is undertaking to do.

[fol. 239] The Court: I don't know whether it is or not.

Mr. Cody: He is undertaking to re-emphasize some errors they made in the article.

The Court: Of course, the whole gist of the whole case is whether or not the facts, statements contained in the article are true.

Mr. Cody: That's true. Well, he has pointed out—he has pointed out and has a right to point out any error in the article, but not to emphasize it or re-emphasize it. He has already pointed out certain errors. It is already in evidence.

The Court: I will let him do it. Let me see it. I don't know what you have got there, but—

Mr. Schroder: That is the last of it. I will hand Your Honor the first one.

The Court: Sir?

Mr. Schroder: Please hand His Honor that.

The Court: I brought my copy this morning.

[fol. 240] Mr. Schroder: In the first column—this is the first column, and each column is on separate cardboard.

The Court: Where are you going to put those, Mr. Schroder?

Mr. Schroder: Well, insofar as this one is concerned I would show this to the witness and have him mark this entire paragraph here where it reads—where it reads, "Butts also said Rakestraw tipped off what he was going to do," and on down to the bottom.

The Court: Of course, that can't go out with the jury.

Mr. Schroder: I understand that; the article itself will be out with the jury.

The Court: Yes, sir.

Mr. Cody: It's already in evidence. I don't know what—

The Court: Well, he wants it where the jury can see it instead of passing it around. I will let it in. I will let you demonstrate with it, but it is not going out with the jury.

Mr. Schroder: I understand that, sir.

[fol. 241] The Court: All right, sir. Are you through with this witness?

Mr. Schroder: I was going to ask him to step down here, if he will.

By Mr. Schroder:

Q. Yesterday you testified—can you see this all right, sir?

A. Uh-huh (affirmative).

Q. That this quotation which I shall now read to you, "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off." Is that what I have just read, was that—that is a quotation that the author said you said to him. Did you tell the author that?

A. No; I didn't.

Q. I see. Will you mark that with a pencil, please?

A. Mark it in what way?

Q. With a parenthesis and put your initials there.

A. What am I signing to?

Q. You don't have to sign it.

A. Initialling it means what?

The Court: You just go ahead and initial it, Mr. Burnett.

The Witness: All right, sir.

By Mr. Schroder:

Q. Just what I read, make it kind of heavy, will you. [fol. 242] In the article there is a quotation appearing on

the second page near the bottom of the second column on that page which reads, quote, and this purports to be something that you told the author that Johnny Griffith in turn had told you at the meeting you attended with Johnny Griffith at the Biltmore, the quote that is attributed to you reads, "‘We knew somebody had given our plays to Alabama,’ Griffith told him,"—"him" being you—"and maybe a couple of other teams we played to, but we had no idea it was Wally Butts."

The Court: Didn't you go over that yesterday?

Mr. Schröder: Not what I am going to ask him now.

Mr. Cody: It is purely repetitious, Your Honor.

Mr. Schröder: Not what I am going to ask him now.

Mr. Cody: It is repetitious, Your Honor.

The Court: Let me ask—let him ask his question, and don't you answer until after I rule on it.

The Witness: All right, sir.

[fol. 243] By Mr. Schröder:

Q. You know, do you not, as a matter of fact that Johnny Griffith has denied telling you that?

The Court: That is not a proper question anyway, Mr. Schröder. I don't think Mr. Griffith's testimony is in evidence yet, and I don't think—

Mr. Schröder: I will wait until—

Mr. Cody: He is going to testify.

The Court: My recollection yesterday was that he went into an explanation as to what he said; well, you heard the testimony; I don't want to repeat it.

Mr. Cody: I want to make one other point, Your Honor, for the record.

The Court: All right, sir.

Mr. Cody: I think I know the purpose for which he is undertaking to emphasize this evidence. We have been over this question at pre-trial procedure. There's been no such documents as any—enlargement of a portion of this article, but to—

[fol. 244] Mr. Schroder: Well, that is the article, Your Honor, that he himself has introduced.

The Court: I am going to let you put that in, Mr. Schroder; I have already ruled on that. What I was concerned with was the question you were repeating.

Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. Let me ask you, this, Mr. Burnett. These notes that—

Mr. Schroder: Have they been introduced in evidence yet? Are they up here?

Mr. Cody: Your Honor, I'd like to get these notes introduced. I've been carrying some of them around and I am afraid I will lose them.

The Court: All right, sir.

Mr. Cody: Those two telephone calls that were identified yesterday—let me have those right there.

The Court: What is the number?

[fol. 245] The Clerk: No. 12.

Mr. Cody: 12, 13, and 14.

The Court: All right, sir, any objections to the notes which have been tendered?

Mr. Schroder: I do not want to give the Court the impression if I say that I have no objection that I am admitting that they are authentic.

The Court: You are not admitting what is contained in the evidence, but you have got no objection to the notes—

Mr. Schroder: That is, they have been identified.

The Court: All right, sir.

Mr. Cody: I'd like, while we are on the subject, I'd like to introduce in evidence the notes; they have already been identified by exhibits number, the two toll tickets that were identified yesterday by Mr. Fleming.

Mr. Schroder: I have no objection.

[fol. 246] The Court: All right, sir, what are their numbers?

The Clerk: 13 and 14.

The Court: All right, let 12, 13 and 14 be admitted.

(Whereupon Defendant's Exhibits Nos. 12, 13 and 14 were admitted into evidence.)

The Court: Is that over objection?

Mr. Schroder: No, sir.

The Court: All right, sir.

Mr. Schroder: No, sir.

The Court: All right, without objection.

By Mr. Schroder:

Q. In connection with these notes that have been identified and admitted in evidence as Defendant's Exhibit 12, your testimony yesterday was that every time that you heard the man that you described as Coach Butts talk to the other party, Coach Bryant, he always referred to him [fol. 247] or called him "Bear" throughout the conversation?

A. One time at the beginning he said "Coach" and most of the time he called him "Bear".

Q. Did he ever call him "Paul"?

A. I don't recall; he may have, Mr. Schroder.

Q. But your recollection today, and as you have indicated on your notes there, was that he was calling him "Bear" certainly a greater majority of the time?

A. Most of the time; yes.

Q. When he wasn't calling him "Coach"?

A. Yes.

Q. You testified yesterday, I believe, that the second notation on Page 1, reading "Reismueller, greatest in history," that that was said by Coach Butts in this form, he is the greatest in the history of the University of Georgia?

A. He said he was the greatest lineman they have had in the history of the University; yes, sir.

Q. And the lad was what, a sophomore?

A. I don't know.

Q. You didn't know then that he had never even played in a varsity game?

A. No, sir.

Q. You being a former football player—turn to Page 2, looking at the last note, reading, “well-disciplined ball club”; what in your experience as a football player does that mean, “well-disciplined ball club”?

A. Well, Mr. Schroder, it means exactly what it says. It was a well-disciplined ball club.

Q. I don't understand it myself; would you amplify it a little bit, clarify what it means to you.

A. Well, Mr. Sehroder, a well-disciplined ball club means one that responds well, I imagine, to instruction, and listens and doesn't fool around with horseplay, and attends to [fol. 248] business. I imagine this is what being disciplined means.

Q. I see. And the statement was made that the Georgia team in September, 1962, was, as described here, a well-disciplined ball club?

A. Yes, sir. But you are taking it out of context. It was part of a statement. He said, “They have a well-disciplined ball club, but this is no thanks to Johnny Griffith, because they had added two coaches.” This is one entire statement.

Q. Yes, sir. But I was referring to the discipline part without regard to who was responsible for it being disciplined or who might be responsible for it not being disciplined.

A. I appreciate that.

The Court: Let's don't argue between witness and counsel. Let's go ahead with the evidence.

By Mr. Schroder:

Q. The notation on the top of Page 3, “On side guard pulls on sweep”; what position did you play when you were in football?

A. I played guard.

Q. What, to you, is a sweep?

A. An end run.

Q. That is around the end?

A. Yes.

Q. A sweep around the end?

A. Yes, sir.

Q. Now, what was the "on side guard pulls" mean?

A. That means that the guard on the side on which you are running pulls out to lead interference. If you are going to run to the right, the right guard pulls; if you are [fol. 249] going to run to the left, the left guard pulls.

Q. When you say "leading interference", leading the way for the ball carrier to go around the end?

A. Yes, sir.

Q. The next note reading "don't overshift". I recall you saying that that had to do with some defensive maneuver.

A. No, sir; I didn't say that.

Q. Well, I'm sorry; I didn't mean to misquote you. What was it you said?

A. I said I wrote this down by itself. I don't recall whether it had anything to do with the play above or not. The statement was made by Coach Butts to Coach Bryant, "Don't overshift," telling him not to overshift.

Q. Not to overshift what; offensively or defensively?

A. His defense.

Q. His defense?

A. His defense.

Q. Of course, you don't know that overshifting is a principal part of every defense of every team?

A. I don't know what?

Q. Overshifting is a principal part of every defense of every team that plays football?

A. Overshifting?

Q. Yes.

A. No; I don't know that overshifting—

Q. You don't—

A. —is a principal part of defense. I'm sorry.

Q. And you are a football fan?

A. Yes; I am a football fan. If you overshift you are in trouble, Mr. Schroder.

Q. Explain that to me, please, sir.

A. You shift yourself out of position, I imagine.

[fol. 250] Q. Well, not what you imagine; I mean, just tell me about this overshifting and how it gets you into trouble.

A. Well, you can overshift on a spread formation and they will go the other way on you, and you are in trouble.

Q. What is a spread formation?

A. When the teams are all spread out, the offense is all spread out.

Q. You mean great distances are between the offensive players?

A. That's right.

Q. And your description of overshifting is that if you overshifted in that sort of a situation and they went the other way, you would be in trouble?

A. Yes, sir.

Q. You don't know that the basic defense of Georgia is overshifting, an overshift, as is Alabama's?

A. No; I don't.

Q. You don't?

A. I don't know that.

Q. Page 4 of your notes, you have "Best since Trippi, Porterfield." Who is Trippi?

A. Charlie Trippi is a former Georgia great football player who was one of the coaches last year.

Q. Are you familiar with his playing days at the University of Georgia?

A. Yes; I am. I remember reading about Charlie Trippi.

Q. Was he considered to be a right fair country ball player?

A. A pretty good country football player.

Q. He was an all around player playing both offense and defense?

[fol. 251] A. Yes; he played in the days when they played football.

Q. There is a note here which you discussed briefly yesterday reading, "Can quick kick", and if I recall correctly, and you correct me if I misquote you, that was in connection with a question asked by Coach Bryant, that is to say, you say you heard the question asked by Coach Bryant of Coach Butts, "Well, what about the quick kicking?" And Coach Butts says, "You don't have to worry about that, because they don't have anybody that can quick kick."

A. That's right.

Q. That is a fair representation—repetition of what you said?

A. Yes, sir.

Q. Well, don't you know that Georgia has a quick kicker?

A. No; I don't.

Q. You don't know that they do quick kick?

A. No, sir; I don't.

Q. The opening part of this article by the editors up here in the top side, referring to the Chicago White Sox scandal, did you discuss anything with Mr. Graham about how—what you said you heard reminded you of any such thing as the Chicago White Sox scandal in 19—when they threw the 1919 World Series?

A. No; I did not.

Q. Did you all discuss that topic at all?

A. No, sir; did not.

Q. The first time you testified—the first time you talked to your friend Bob Edwards, you testified yesterday it was January the 4th?

A. That's right.

[fol. 252] Q. You testified yesterday that you did not find your notes until two days before you had the meeting at the Atlanta Biltmore?

A. That's right; the day before, as a matter of fact.

Q. Then—

A. A day or two before.

Q. Then you did not at any time show your notes to Bob Edwards before you found them on the day before

you met at the Biltmore, the day that you met being January 24?

A. I couldn't have shown them to anybody, Mr. Schroder, until I found them.

Q. That's right.

A. And I found them about two days before we met at the Biltmore, and I met Mr. Bob Edwards that morning and showed him the notes.

Q. You met on January 24; that would have been January the 22nd?

A. No, sir; that was about January the 17th. The 24th is when I met with Mr. Cook Barwick in his office.

Q. No, sir; I don't want you to be in error.

A. I don't want to be in error.

Q. All right, sir.

A. We—we met on the 14th—on the 4th and about two weeks later is when I met with Johnny Griffith. I don't remember the exact dates.

Q. It was January the 25th. I am not supposed to testify, but I don't want you to get in error.

A. I don't want to be in error.

The Court: I thought the Coaches' Convention was the 17th of January; am I in error?

[fol. 253] Mr. Schroder: If that is what the testimony is.

The Court: That is what the testimony was, is my recollection.

Mr. Schroder: It is in error. All I can say, Your Honor, is that there were a lot of depositions in this case.

The Court: They would know. It was my impression there was a convention out here at the Biltmore Hotel on January the 17th. I could be in error.

Mr. Schroder: I think that is a week earlier.

The Witness: It was during the week of the Coaches' Convention, Your Honor; it was on a Thursday, the last part of the week of the Coaches' Convention.

Mr. Schroder: I will bring it out by some other witness. I will state for the record that it was January the 24th, Thursday.

By Mr. Schroder:

Q. If it was January 24 that you met with Coach Griffith, it would have to have been January 22 or 23 that you first got hold of your notes?

A. Right.

Q. And you could not, therefore, have shown them to [fol. 254] your friend Bob Edwards before that time?

A. This is true.

Q. All right, sir. Now, the—

Mr. Schroder: Your Honor, just a minute, please. The deposition, please, Mr. Smith. I didn't bring it up here with me; 25.

Mr. Smith: Page 25?

By Mr. Schroder:

Q. Mr. Burnett, your associate, Mr. Flack, had made several efforts to sell or peddle this story, had he not?

A. I don't know of several efforts; I know of one, Mr. Schroder.

Q. You know of one, and that was the only one you know of is the one involved with Phil Rizzuto in New York?

A. That's right. That was approximately two weeks before—

Mr. Cody: Your Honor, I don't think it is proper—

The Court: I didn't hear that, the first.

Mr. Cody: I don't think it is proper for this witness to testify about what somebody else did. You get into that with another witness.

[fol. 255] Mr. Schroder: All right, sir; will you hold this witness subject to recall, Your Honor?

The Court: What was the testimony?

Mr. Schroder: It had to do with an associate of his—

The Court: Mr. Flack; I got that part of it, but sell it to who?

Mr. Schroder: Phil Rizzuto was one, and others. Mr. Cody properly pointed out I can bring it out by Mr. Flack, but I want this witness held to put back on the stand.

The Court: This witness will be here all during court.

Mr. Cody: You needn't worry about that part. I think it would be better to bring it out and you can bring Mr. Burnett back to the stand.

The Court: Yes, sir.

By Mr. Schroder:

Q. At any rate, you did, did you not, Mr. Burnett, promised Mr. Barwick and the group in his office that you would not sell the story, didn't you, Mr. Barwick sitting right here?

A. You are referring again to the Phil Rizzuto—
[fol. 256] Q. Yes.

A. Yes, sir; I did, when I reported it to him.

Q. You promised him you would not sell the story, didn't you?

A. Well, yes, sir.

Q. Did you ever go to him and tell him that you were going to sell it or had sold it?

A. I didn't sell the story, Mr. Schroder.

Q. You got paid for it, didn't you?

A. Subsequently, but I did not give the story in the beginning with the intention of doing it for selling it.

Q. Did you ever ask Mr. Barwick to relieve you of the promise you made to him that you would not give the story for money or sell it or whatever else you did?

A. No; I did not.

Mr. Schroder: That's all, Your Honor.

Examination.

By the Court:

Q. Mr. Burnett—

A. Yes, sir.

Q. During the entire conversation which you allegedly overheard over the telephone, did you ever hear the word "Bakestraw" used?

A. Yes, sir; he used it as I have it here in the notes, Your Honor, when he said Rakestraw was—went to the right in describing a play; he used the name of Rakestraw.

Q. That was the only time?

A. The only time, and he said when Rakestraw goes to the left, an optional left pass, if they can block the man on [fol. 257] the corner he keeps running; if they can't they pass. That is the only time in my notes or that I recall hearing the name Rakestraw used.

The Court: I just wanted to clarify that.

Mr. Schroder: All right, sir.

The Court: Anything further from this witness, Mr. Cody?

Mr. Cody: Is he through? You through with him?

Mr. Schroder: Yes; yes, sir.

The Court: Yes, sir.

Mr. Cody: I have a few questions, Your Honor.

Redirect examination.

By Mr. Cody:

Q. Mr. Burnett, yesterday Mr. Schroder asked you if you had the notes, meaning the notes you have in your hands now, if you had those notes before you when you had this discussion with Mr. Graham who was then representing Saturday Evening Post.

A. Yes, sir.

[fol. 258] Q. And you said that you did not have them before you?

A. No; I did not.

Q. Where were those notes at the time?

A. In Mr. Barwick's office, Mr. Cook Barwick's possession with the athletic board. I say "in his possession"; to my knowledge he had them.

Q. You had previously turned them over to the University officials?

A. Yes, sir; I had.

Q. Then you—in your discussion—

Mr. Schroder: Don't lead him.

By Mr. Cody:

Q. In your discussion with Mr. Graham, you were speaking from memory?

A. Yes, I was.

Q. Who was—who was present, Mr. Burnett, at this first meeting that you had in Mr. Barwick's office?

A. Mr. Barwick—

Mr. Schroder: Your Honor, we have been all over this, I believe. I have got notes about this.

The Court: Didn't we go over this yesterday, Mr. Cody?

Mr. Cody: We touched on this meeting, but I didn't get the personnel of those present.

[fol. 259] The Court: Go ahead. If you've covered it, we'll stop you.

By Mr. Cody:

Q. Go ahead; state briefly.

A. Mr. Barwick, Dr. Aderhold, Mr. Bolton, Bob Edwards and myself.

Q. Did Mr. Bolton and Dr. Aderhold at that time make known who they were?

A. Yes, sir.

Q. Did you at that time know that a tape recording was made of that conference?

A. Yes, sir. They asked my permission, and I gave it.

Q. Was that the meeting at which they asked you to make an affidavit?

A. Yes, sir.

Q. And to—

Mr. Schroder: We have been all over this, Your Honor.

The Court: Yes, sir.

By Mr. Cody:

Q. Mr. Schroder asked you a few minutes ago about some of your conversation with Mr. Carmichael. Did I

understand you to say in response to one of his questions that Mr. Carmichael is the one that told Mr. Pierre Howard about this story?

A. Yes, sir.

Mr. Schroder: Wait a minute; whoa, whoa! That would [fol. 260] be pure hearsay. That was not answered; anyway, if it was, it would be pure hearsay.

Mr. Cody: He didn't object to it.

The Court: I believe I asked it; I believe that's correct. I didn't know how he knew about it. I don't want to go into any hearsay on it. I didn't know I was eliciting hearsay.

Mr. Schroder: May I move it be removed?

The Court: I think it is a minor detail.

By Mr. Cody:

Q. Mr. Barnett, what did Carmichael tell you, if anything, about keeping his name out of this?

Mr. Schroder: If the Court please, that would be hearsay.

The Court: Yes, sir. I sustain the objection. Mr. Carmichael will be here, won't he?

Mr. Cody: I didn't subpoena him, Your Honor. They didn't have his name on the list of witnesses they gave me. Maybe he does. That's all we have of this witness.

[fol. 261] J. D. BOLTON called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Your name is Mr. J. D. Bolton?

A. Yes, sir; that is correct.

Q. What is your position with the University of Georgia, Mr. Bolton?

A. I am comptroller and treasurer of the University of Georgia, and also treasurer of the Athletic Association.

Q. How long have you been connected with the University?

A. Since July 1, 1933.

Q. What part of that time have you known Coach Butts?

A. Since Coach Butts came there, I believe, in 1938.

Q. During that time have you been closely associated with him?

A. Yes, sir.

Q. How often would you see him and talk to him?

A. Quite—quite frequently.

Q. Almost daily?

A. Yes, sir; and sometimes—some instances, sometimes it would be maybe a week or more.

Q. How long have you been on the Athletic Board?

A. I think it was about 1935 or—6.

Q. Have you continuously been on it since?

A. Yes, sir.

Q. On it now?

A. Yes, sir.

[fol. 262] Q. What is the function of the Athletic Board, Mr. Bolton?

A. The Athletic Board—the University of Georgia Athletic Association is incorporated, and it has full responsibility for the athletic program, subject, of course, to the control of the Chancellor of the University system and the Board of Regents.

Q. How many members constitute that Board?

A. I believe it is fifteen.

Q. Composed in part by faculty?

A. Yes, sir; I believe there are eight faculty members and seven non-faculty members, alumni.

Q. When did you—when this so-called Butts-Bryant affair first come to your attention?

A. I believe it was on January the 24th.

Q. Do you have your notes there?

A. Yes, sir. Yes, sir; that's correct; is was on January 24, 1963.

Q. What brought it to your attention?

A. I was registered at the Biltmore Hotel to attend the Southeastern Athletic Conference, and we registered there, it was Thursday afternoon on January the 24th, and I was in my room looking at television. Coach Griffith called me and asked me if I—

Mr. Schroder: If the Court please, that would be hearsay, the telephone and any other conversation he had.

The Court: I will let him go into what was said, but not—when he first had knowledge of it. I won't let him go into any knowledge of any conversation.

[fol. 263] By Mr. Cody:

Q. Did you thereafter go to Mr.—Coach Griffith's room?

A. Yes, sir.

Q. Was that the first time he called it to your attention?

A. Yes, sir.

Q. What did you do after that?

A. I told him we would have to—

The Court: We can't go into any conversation, Mr. Bolton.

Mr. Cody: All right.

By Mr. Cody:

Q. Did he—Mr. Bolton, I show you what has been identified as the Defendant's Exhibit No. 12, and I'd like to ask you if those papers were shown to you at that time?

A. Yes, sir; they were.

Q. By whom?

A. Coach Johnny Griffith.

Q. Did you take charge of them from then on?

A. No, sir.

Q. What happened to them from that point?

A. He kept them until the following Saturday morning, about 9:30.

Q. Who got them then, if you know?

A. He turned them over to President Aderhold that morning on Saturday morning.

Q. I see.

A. And President Aderhold turned them over to me and asked me to lock them up in the vault.

[fol. 264] Mr. Lockerman: If Your Honor please, we object to that.

The Court: Sustain the objection.

The Witness: I'm sorry.

The Court: You did lock them up after that?

The Witness: Yes, sir.

By Mr. Cody:

Q. Did you later turn them over to Mr. Barwick?

A. Yes, sir.

Q. When?

A. It was that Saturday night, Saturday night on June 26th.

Q. Was Mr. Barwick the attorney for the Athletic Board and the University?

A. Mr. Barwick is a member of the Athletic Board. The Athletic Board at that time had no attorney, I don't believe.

Q. Now, you referred to meeting him on a Saturday. Where did you meet him?

A. At his home here in Atlanta.

Q. Don't go into any conversation that took place there. I am just trying to establish some dates. Now, thereafter did you—did you call a meeting in Mr. Barwick's office and have Mr. Burnett present?

A. I didn't call the meeting.

Q. Who did?

[fol. 265] A. President Aderhold.

Q. Did you attend the meeting?

A. Yes, sir.

Q. Do you have the date of that?

A. Yes, sir; it was on January 29, Tuesday.

Q. Now, following that meeting did you thereafter have a meeting at which Coach Butts attended?

A. Yes, sir.

Q. When was that?

A. That meeting was on February the 22nd, on Friday.

Q. Where?

A. In Mr. Cook Barwick's office.

Q. Now, at that time was Coach Butts made acquainted with this—with those notes?

A. Yes, sir.

Q. Do you remember whether or not he had those notes and took a look at them?

A. Yes, sir.

Q. Do you know whether or not Coach Butts was acquainted with the nature of the affidavit that Mr. Burnett had signed?

A. No, sir; I wouldn't know. I don't think he was.

Q. Was he told the purpose of this meeting after he got there?

A. Yes, sir; yes, sir.

Q. What was the purpose of it?

A. The purpose of the meeting was to inform Coach Butts of everything that we knew about at that particular time.

Q. That is, the Butts-Bryant affair?

A. Yes, sir.

The Court: Mr. Cody, I am not quite clear, and I don't [fol. 266] know whether the jury is, who was present at this meeting on February the 23rd, where it was held, and so forth.

Mr. Cody: I am just about to get there.

The Court: I am jumping ahead of you. I didn't quite know.

Mr. Cody: That is my next question, Your Honor.

By Mr. Cody:

Q. That meeting, I believe, was in Mr. Cook Barwick's office?

A. That is correct.

Q. At what time? Do you have a note of that?

A. I believe it was 10:00 a. m. I have a note here to that effect.

Q. As a matter of fact, Mr. Bolton, didn't—didn't you personally drive Coach Butts from Athens to that meeting?

A. Yes, sir.

Q. You invited him to ride with you?

A. Yes, sir; he rode with me and President Aderhold.

Q. Who was it contacted him to tell him that he was wanted at that meeting? Was it you?

A. No, sir.

Q. Now, tell us—tell us who all was at this meeting, if you know.

A. It was Chancellor Colwell, Mr. James Dunlap.

Q. That is Harmon Colwell?

A. Chancellor Colwell, Chancellor of the University System of Georgia. Mr. James Dunlap—

Q. Wait a minute, wait a minute. Who is he?

A. He is the Chairman of the Board of Regents of the University System of Georgia.

Q. Go ahead.

A. Mr. Bernie Moore, Commissioner of the Southeastern Conference.

Q. Who else?

A. Mr. William Hartman of Athens, Georgia, Coach Butts, Mr. Cook Barwick, Dr. Aderhold, and I.

Q. When you gave Coach Butts those notes, did he make any comment about them?

A. Yes, sir.

Q. Could you recall for the jury what comments he did make?

A. The best that I remember, Coach Butts looked at the notes and said, "No doubt the guy heard what he said he heard. I don't blame him for placing the interpretation

that he did on this conversation. If I had been in his place, I probably would have thought the same thing, but he is mistaken. It's just conversation, ordinary football talk among coaches, and that you know I would not give old Bryant anything to help him and hurt Georgia, and I wouldn't do anything to hurt Georgia. If I did give any information to hurt Georgia it was not intentional."

Q. When was it that Coach Butts resigned as athletic director?

A. The following day, on February 23, which was Saturday following this meeting that you just referred to on February the 22nd.

Q. Has he had any connection with the University since that time?

A. Well, he resigned on that day effective February the [fol. 268] 28th, and there's been no connection since that time.

Q. Mr. Bolton, I assume by your testimony that you were on the Athletic Board in 1960 and '61; I believe you said your service was continuous?

A. Yes, sir; that is correct.

Q. When did Coach Butts resign as football coach at the University?

A. I believe that was effective January 1st, 1960. I expect I'd have to refer to some notes.

Q. See if it wouldn't be '61.

A. I believe it was '61.

Q. Did you have any understanding with him at the time of that resignation that he was to have nothing to do with football?

A. President Aderhold made a statement to him at the Board meeting—

Mr. Lockerman: Your Honor please—

The Court: Yes, sir; that would be hearsay.

Mr. Lockerman: Pure hearsay.

The Court: Unless Coach Butts was present.

The Witness: Yes, sir.

The Court: Were you present when Coach Butts—was

[fol. 269] Coach Butts present when Dr. Aderhold made the statement?

The Witness: Yes, sir.

The Court: I will let it in.

By Mr. Cody:

Q. Go ahead and tell us what he said.

A. He told Coach Butts he could contribute a lot to the public relations of the University and the Athletic Association, but he wanted—and the over-all athletic program, but he wanted it clearly understood that he would have no responsibility for coaching.

Q. Was that a voluntary resignation he made, Mr. Bolton?

A. So far as I know.

The Court: What resignation are you referring to?

Mr. Cody: 1961, the first, as coach.

By Mr. Cody:

Q. From that time, Mr. Bolton, has he had anything to do with the football team?

A. Not to my knowledge; no, sir.

Q. Thereafter and before—before this resignation of February 23 that you mentioned effective February 28, 1963, was there any previous resignation that you know of as athletic director?

[fol. 270] A. I'm sorry; I didn't quite catch the last date. Prior to February 23?

Q. Prior to that, did he tender his resignation as athletic director previous to that?

A. Yes, sir.

Q. What reason did he give?

A. He gave as a reason that he had realized that he had devoted a great deal of his time to personal business.

Q. Was anything said about that interfering with his duties as athletic director?

A. Yes, sir.

Q. Did you go into any detail about that? Don't mention the details; I just want to know if there were any.

A. Some of the details on it; yes, sir.

Q. Did he mention anything at that time about his physical condition?

A. I didn't—not to me; no, sir.

Q. Do you know, Mr. Bolton, whether or not these outside activities of Coach Butts had hurt the University?

Mr. Schroder: Had what? I didn't hear.

The Court: Just a moment, Mr. Bolton, don't answer that question. What is the nature—

Mr. Cody: These business activities that he referred to, his outside business interests. Let me re-form the question. [fol. 271] The Court: All right, sir. Don't answer the question, Mr. Bolton.

By Mr. Cody:

Q. Do you know whether or not these outside business interests that Coach Butts had did interfere with his responsibilities as athletic director?

Mr. Schroder: If the Court please, I think that would call for a conclusion of the witness.

The Court: Well, if he was one of the officers of the Athletic Board, I will let him answer that, but—

Mr. Schroder: I don't think it is—I will withdraw the objection.

The Court: All right, sir, go ahead.

By Mr. Cody:

Q. Can you answer that question?

A. Yes, sir.

Q. What is your answer?

A. I think it did.

Q. It did?

A. Yes, sir.

Mr. Cody: I believe that's all.

[fol. 272] The Court: We are going to take a recess for fifteen minutes.

Members of the jury, I must admonish you as previously—you may step down, Mr. Bolton.

(Whereupon the witness was excused from the stand.)

The Court: I am not going to send you to your jury room, but let you refresh yourselves on the outside. As I admonished you yesterday not to discuss the case among yourselves or let anyone discuss it in your presence. Simply dismiss it from your mind until we return at 11:25. Let the jury pass out; everyone else remain seated.

(Whereupon the jury retired from the courtroom at 11:12 a. m.)

The Court: Mr. Marshal, we will recess until 11:25.

(Whereupon Court recessed at 11:12 a. m., reconvening at 11:25 a. m.)

After Recess

The Court: Do you have any further questions, Mr. Cody?

Mr. Cody: Yes, I did, Your Honor.

[fol. 273] The Court: All right, sir, you may continue.

Mr. Cody: I have three more questions I'd like to ask Mr. Bolton which I neglected to ask a few moments ago.

J. D. BOLTON having resumed the stand, testified further as follows:

Direct examination (Continued).

By Mr. Cody:

Q. Mr. Bolton, at this meeting in Mr. Barwick's office February 22 when the other representatives of the University were present, was Coach Butts asked to sign an affidavit?

A. Yes, sir.

Q. What did he say?

A. He said, no, he would not.

Q. Was he asked to take a lie detector test?

A. Yes, sir.

Q. What did he say about that?

Mr. Schroder: If the Court please, they know that is strictly inadmissible.

The Court: Yes, sir; I don't believe that is admissible.

Mr. Schroder: Cody knows that.

[fol. 274] Mr. Cody: I think it is admissible to ask if he was requested to take one. I am not going into the results of it.

The Court: If he didn't take one there wouldn't be any results. I think the only purpose, and I thought I stated yesterday to the jury and I will instruct the jury again on the admissibility of the polygraph or lie detector test, would be to show in mitigation of damages, if any, on behalf of the Post, and I don't think that is a proper question, and I sustain the objection.

By Mr. Cody:

Q. Now, Mr. Bolton, I have one more question I'd like to ask you. What was the date of this resignation of Coach Butts as athletic director, the one previous to the February 23 resignation?

A. January 28, 1963.

Mr. Cody: Thank you, sir; that's all we have.

The Court: All right, Mr. Schroder.

Cross examination.

By Mr. Lockerman:

Q. I believe you testified, Mr. Bolton, that you and Wally Butts, that you had been at the University of Georgia since 1933, and he had been there since 1938?

A. Yes, sir.

Q. Is that right?

A. That's correct.

[fol. 275] Q. The two of you together?

A. Yes, sir.

Q. I believe that Mr. Cody asked you about those notes—
Mr. Lockerman: May I have them?

By Mr. Lockerman:

Q. —and about the first time you saw them, and I think you have some memorandum as to the first time that you said that you saw these notes—

A. That's right, sir.

Q. The Defendant's Exhibit No. 12. Now, you don't know anything about these notes yourself, do you?

A. I know nothing of the technical aspects of football; no, sir.

Q. You don't know anything about these notes themselves, do you?

A. I don't believe I understand the question, Mr. Lockerman.

Q. You don't know yourself who made the notes or when they were made, do you?

A. Oh, no, sir.

Q. They were merely handed to you by Coach Griffith; is that correct?

A. That is correct.

Q. As a matter of fact, these notes don't mean anything to you either, do they?

A. Not too much.

Q. Yes, sir. You don't know anything about football, do you?

A. No, sir; not the technical aspects of it.

Q. Mr. Cody asked you about the day that you came over to the meeting in Cook Barwick's office, and I believe [fol. 276] he asked you about—didn't he ask you if Wally Butts rode over here with you?

A. Yes, sir.

Q. As a matter of fact, Wally Butts called you that morning and asked you if he could ride here with you, didn't he?

A. I don't think that is right.

Q. Well, in any event he did ride in your car with you, didn't he?

A. Yes, sir; that's correct.

Q. And you at that time knew everything about, or rather you knew what the purpose of that meeting was, didn't you?

A. That is correct; yes, sir.

Q. And I believe you testified on direct-examination that so far as you knew Wally Butts didn't know anything about the purpose of that meeting, did he?

A. I don't remember that question was asked, but I don't believe he did.

Q. Yes, sir. And it took you about, say, an hour or an hour and a half to ride over here from Athens for the meeting, didn't it?

A. That's correct.

Q. Did you say anything to Wally Butts, this man you had been working with for, say, twenty-five years, about what the purpose of that meeting was?

A. No, sir; nothing was said whatever.

Q. You just kept perfectly quiet, didn't you?

A. Oh, no, sir; we talked.

Q. I mean about the purpose of the meeting.

A. Oh, yes, sir.

Q. You didn't mention why you were—you didn't mention why you were bringing him over here for the meeting, did you?

[fol. 277] A. No, sir; Dr. Aderhold was in the car also.

Q. And neither did Dr. Aderhold?

A. No, sir.

Q. Neither one of you?

A. That's correct.

Q. I believe you testified that when you finally got into the meeting in Cook Barwick's office, and the purpose of the meeting was brought out to Wallace Butts and he was shown these notes, he immediately said, did he not, that possibly the man heard some conversation between himself and Bryant; is that about what he said?

A. No, sir. He said that he didn't doubt that the guy heard what he said he heard. You want me to repeat the whole thing again?

Q. I think I remember quite well what you said, and I suppose the jury does too. The next thing he said was that he misinterpreted or didn't understand the conversation; isn't that right?

A. Yes, sir; that's correct.

Q. And that he had not given any information to Bryant in the telephone conversation, if he had one, that would help him, didn't he?

A. Well, the way I understood it was, he said that, "You know I wouldn't give old 'Bear' anything to help him".

Q. That is what I was getting to next.

A. Yes, sir.

Q. He told you immediately, and the others who were gathered there, that you knew, speaking to all of you, that he would not give old "Bear" anything that would help him?

A. Yes, sir.

Q. He said that, didn't he?

A. Yes, sir; he said that.

[fol. 278] Q. And he said that immediately, didn't he? I mean, in the conversation?

A. In the conversation; yes, sir.

Q. Yes, sir. I believe you referred also to some testimony about—I mean, in your testimony you said something about the fact that Wally Butts had some outside activities other than his connection with the Athletic Department.

A. Yes, sir.

Q. Is that correct?

A. That's correct.

Q. Is Wally Butts or was Wally Butts the only man that had any activities other than—that is, at the University of Georgia, other than his activities with the University?

A. Oh, I shouldn't think so.

Q. There were others, weren't there?

A. Oh, sure.

Q. Yes, sir.

Mr. Lockerman: Will you mark these two papers for identification, please, Plaintiff's Exhibit whichever number is next?

The Court: Are you familiar with these exhibits that are being marked, Mr. Cody?

Mr. Cody: I never have seen them. I'd like to take a look at them.

The Court: All right, sir.

[fol. 279] The Clerk: Plaintiff's Exhibit No. 26 for identification is a copy of a letter dated October 22, 1962 to J. D. Bolton from Wallace Butts.

(Whereupon above document was marked for identification only as Plaintiff's Exhibit No. 26.)

The Clerk: 27 is a copy of a letter dated April 27, 1962 to J. D. Bolton from Wallace Butts.

(Whereupon above document was marked for identification only as Plaintiff's Exhibit No. 27.)

Mr. Cody: He hasn't offered them in evidence yet.

Mr. Lockerman: I just wanted to get him to identify them; that's all.

By Mr. Lockerman:

Q. Mr. Bolton, will you look at these two documents marked for identification as Plaintiff's Exhibits Nos. 26 and 27, which are copies of letters addressed to you dated October 22, 1962, and the other dated April 27, 1962, and I ask you to state whether or not they are copies of letters you received from Wallace Butts.

A. Yes, sir; I can identify them.

[fol. 280] Mr. Lockerman: All right, sir, thank you. That's all.

The Court: Do you have any further questions?

Mr. Cody: I do; I do, Your Honor.

Redirect examination.

By Mr. Cody:

Q. Mr. Bolton, while we are on the subject of letters, do you have a letter there you received from Mr. Schroder?

A. Yes, sir; I think so.

Q. Will you let me see that just a minute?

Mr. Schroder: Can I identify it?

The Court: I presume you are familiar with that letter?

The Witness: All right, sir.

Mr. Cody: Will you identify this as Mr. Schroder's letter; that would be Defendant's Exhibit No. 16, wouldn't it?

The Clerk: 15.

[fol. 281] Mr. Cody: 15, and the reply is 16?

The Clerk: Yes, sir.

(Whereupon above documents were marked for identification only as Defendant's Exhibits Nos. 15 and 16 respectively.)

By Mr. Cody:

Q. Mr. Bolton, I show you the Defendant's Exhibit No.—

Mr. Schroder: You haven't shown it to me.

The Court: Sir?

Mr. Cody: I thought you knew what was in there.

Mr. Schroder: Well, I don't know.

The Marshal: Let's have order, please.

By Mr. Cody:

Q. Mr. Bolton, I ask you to take a look at this Defendant's Exhibit No. 15, and state if you received that during the course of the mail.

A. Yes, sir; I did.

[fol. 282] Q. Is the other exhibit, Defendant's Exhibit No. 16, your reply?

A. Yes, sir.

Q. You, of course, don't know whether that is Mr. Schroder's signature or not?

A. No, sir.

Q. But you did address your letter to him?

A. Yes, sir.

Q. Mr. Bolton, in connection with these outside business activities of Coach Butts, I show you what has been identified—

Mr. Cody: I don't believe it has been identified. Mark this as Defendant's Exhibit No. 17, which is a 42-page document listing some telephone calls.

The Clerk: Defendant's Exhibit No. 17.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 17.)

By Mr. Cody:

Q. I hand you the Defendant's Exhibit No. 17, and ask you to take a look at it, and then state to the Court and jury whether or not that is an instrument Coach Butts asked you to prepare.

A. I have got to do a little comparing here myself.

Q. That is all right. Take your time. Would you like to come over here to the table?

A. I think I can work it right here.

[fol. 283] The Court: The alternate juror on the rear, sir, can you see and hear everything?

Juror: Yes, sir.

The Witness: This looks like a part of it. I am not sure it is all.

By Mr. Cody:

Q. Well, such of it as is there, answer the question with reference to that.

A. All right, sir. I know this is a part of it.

Q. Did Coach Butts render any assistance in the preparation of that document?

A. Yes, sir.

Mr. Schroder: I haven't seen the document they are talking about, Your Honor.

The Court: I haven't either. I just don't know what the relevancy is.

Mr. Schroder: May I look at it, Mr. Counselor?

Mr. Cody: Sure, but I haven't finished with the witness, though.

[fol. 284] The Court: I think he is entitled to look at it, and see whether or not he might want to make an objection to it.

By Mr. Cody:

Q. Did you talk to Coach Butts after that document was completed or the one that you have there that has been identified?

A. Yes, sir.

Q. What did he say about it as to its correctness or as to any error?

A. Well, I have a letter from him.

Q. Will you let me see that?

A. I have two letters, one letter on February 26, one letter on April the 5th, one on April the 8th, one on April the 15th.

The Court: May I make this inquiry. What is the relevancy—

Mr. Schroder: That is what I would like to know, Your Honor.

The Court: —of all of this testimony insofar as the telephone call was concerned which was allegedly made to—

Mr. Cody: I'd like to discuss that with Your Honor, but I think it would be improper in the presence of the jury.

The Court: Well, let the jury be taken to the jury room. We will go ahead and work this out.

[fol. 285] (Whereupon the jury retired from the courtroom at 11:46 a. m.)

The Court: The line of questioning, as I recall, is based on outside activities.

Mr. Cody: Yes, sir.

The Court: And I assume that—and I certainly don't know; effort is being shown that phone calls were made on other activities, but what has that got to do with the issues in this case?

Mr. Cody: Two.

The Court: Sir?

Mr. Cody: Two, Your Honor. It has two.

The Court: What issue?

Mr. Cody: Number one, and the principal one, these is the information disclosed by this 42-page document which discloses—

[fol. 286] The Court: You said a 42-page document. That is a list of phone calls?

Mr. Cody: That's right. First, it discloses twenty-eight hundred eighteen dollars and ten cents in telephone calls that Coach Butts made on these personal and business transactions which he charged to the University.

Mr. Schroder: They have been paid. I think that's—that's all been paid.

The Court: Let's take number one. What's that got to do with this case?

Mr. Cody: I want to prove by this witness that this list of telephone calls was approved by Coach Butts and the parties to whom these calls were made are relevant in this case.

The Court: In proving what part of the case?

Mr. Cody: One, if Mr. Schroder, while he did not mention in his opening statement that any gambling was involved or had any relevancy to this case, nevertheless if he does see fit to inject it into this case, this document is very important in that respect because it discloses a tremendous number of calls to several different parties whom

[fol. 287] I expect to show and can show were gamblers. I am glad to make that statement in the absence of the jury, because I don't care to make any statement to prejudice Coach Butts' case, but I think that on that subject that this document is highly important and is relevant, and I intend to offer it for that purpose.

Mr. Schroder: Let me be—

Mr. Cody: It connects up a sequence of events which I think are highly relevant in this case. Now, I am—

The Court: Well, is it your contention in your plea of justification that there was gambling involved in the football fix; I mean, that is a loose term.

Mr. Cody: We haven't charged Coach Butts with gambling, and it is my contention that we have not. Mr. Schroder has said that by—and set forth in his pleadings by inference he reaches that conclusion.

The Court: Do you contend—

Mr. Cody: I am not offering this document at the present time, Your Honor. What I want this witness to do while he is here and available is identify it. I am not offering it in evidence yet, but I want to, while this witness is here, I want him to identify it.

[fol. 288] The Court: Mr. Schroder, is it your contention that the article does charge gambling?

Mr. Schroder: Let me, if I—

The Court: Can you answer that question?

Mr. Schroder: I can't answer it right now.

The Court: I think that deals with the admissibility of this answer.

Mr. Cody: I think he ought to answer it.

Mr. Schroder: I'd like to direct some remarks to that exhibit and what I have to say in connection with it.

The Court: All right, sir, go ahead.

Mr. Schroder: I know Mr. Cody real well, but I don't think it is fair what he has just said in the presence of the press, because he knows that is not the purpose for which he has that document there. He knows there is not but one man on there that is even mentioned in any respect with

relation to gambling. I don't think it is proper for him to [fol. 289] stand here in the presence of the press and say things that will really hurt the plaintiff.

The Court: Let's—let's eliminate the personalities. What I am trying to determine is the real issue. I will ask you the question, Mr. Schroder: Is it your contention that the article does, by the use of the word—I believe the use of the words "corrupt" and "fixing" and "rigging," is it your contention and will it be your contention that they did charge gambling?

Mr. Schroder: It does, Your Honor; I think it does charge that there was gambling in connection with the outcome of this game by both of mine—not both of mine, but both parties.

Mr. Cody: I believe it is admissible.

The Court: Yes, sir.

Mr. Schroder: What is?

Mr. Cody: Your Honor, let me make one statement.

Mr. Schroder: Just a moment, just a moment, whoa, whoa. He said he thinks it is admissible, and what did Your Honor say?

[fol. 290] The Court: I think if your argument or contention to the jury is that it does charge gambling by innuendo or whatever it might be, I think he would be entitled at the proper time, if you do put it in, put forth such evidence, I think it would be admissible for him to show telephone calls to gamblers, if that is charged.

Mr. Schroder: No, sir. Let me straighten this out, Your Honor; that is not what this document shows that he is talking about he wants to introduce to prove—to disprove it.

The Court: Well, I don't—

Mr. Sehroder: Let him take the ones off here he says he can prove are known gamblers, and maybe he has got something, but that is not what he wants to introduce this document for, and he knows it. There is not one single person on there that is a known gambler at the time of this transaction, and I challenge him to prove it.

The Court: Of course, Mr. Schroder—

Mr. Cody: We have not depositions here—

The Court: Just a moment; just a moment. I have never seen the document. I don't know what is contained in it.

[fol. 291] Mr. Schroder: He says what it shows. I want Your Honor to see it.

The Court: Well, as I understand—

Mr. Cody: I say it's got to be connected up.

The Court: Let's get the procedure straight. As I understand you, you do not intend to offer the document at this time?

Mr. Cody: No, sir.

The Court: And all you want to do is have the document identified by Mr. Bolton—

Mr. Cody: Yes, sir.

The Court: And go no further?

Mr. Cody: Except—

The Court: All right, sir.

[fol. 292] Mr. Cody: Except to this extent. I want to offer these letters with it. I want to prove by this witness before he gets away—

The Court: You are not offering the letters at this time; you are just identifying the letters?

Mr. Cody: Just identifying them before this witness gets out of pocket. I want to get the record straight.

Mr. Schroder: I have never seen—

The Court: You have identified it.

Mr. Schroder: Well, I have never seen them.

Mr. Cody: Well, you will have an opportunity to see them.

Mr. Schroder: Well, thanks.

Mr. Cody: I want to make one other statement in response to what Mr. Schroder has said. While we are talking about the discreetness with the press, I have never made any statement in this case to the press or anybody else with any intention of causing any prejudice or harm [fol. 293] to Coach Butts. There's been a good deal of—there's been a good deal of conferences, a good deal of

quotations from Mr. Schroder to the press, and I want to say that I resent any comment on his part that I am making this—trying to identify these documents for the benefit of the press. I can't help them being there, but, at the same time, I am not going to prejudice my client's case by excluding them from the evidence.

The Court: Well, we will cross that bridge when we get to it. I will let him identify the documents such as—and then we will, at such time as the evidence develops, we will determine whether or not they are admissible. I don't know what is in the documents. I can't rule on them without reading them.

Mr. Schroder: I don't know what is in the letter. May I have a look at the letters? I have never had them shown to me during any pre-trial hearing.

Mr. Cody: I have been presented with documents I have never seen before, and I can't help that.

The Court: Well, of course, that is where—I thought we had had enough pre-trial, but apparently we didn't. All right, sir.

Mr. Cody: I don't think we had room for all this, Judge. [fol. 294] The Court: Let the jury be brought back in.

(Whereupon the jury returned to the courtroom at 11:55 a.m.)

Mr. Cody: Will you identify that as a Defendant's Exhibit? What will that be, 17?

The Clerk: It will be Defendant's Exhibit No. 18. It is a letter dated April 8, 1963 to J. D. Bolton from Wallace Butts.

(Whereupon above document was marked for identification only as Defendant's Exhibit No. 18.)

By Mr. Cody:

Q. Mr. Bolton, I believe you have identified this Defendant's Exhibit 15 and 16 as—I believe you have already identified that. I show you now the Defendant's Exhibit

18, and ask you if that is a letter that you received from Coach Butts?

A. Yes, sir; it is.

Q. Do you know his signature?

A. Yes, sir.

Q. Is that it?

A. Yes, sir.

Q. Did this Exhibit 18 have reference to the Defendant's Exhibit No. 17, the one—

Mr. Lockerman: Your Honor please, the exhibits will speak for themselves.

[fol. 295] The Court: I will let him testify to it, if he connects it up. I haven't let the exhibits in yet.

A. (By the Witness) Yes, sir; that is correct.

Mr. Cody: I believe that's all.

The Court: Did you have any further questions, Mr. Lockerman?

Mr. Lockerman: No, sir.

Mr. Cody: You can have these back.

The Court: Did I understand you to say you didn't?

Mr. Lockerman: No further questions.

The Court: All right, sir, let Mr. Bolton step down.

(Whereupon the witness was excused from the stand.)

The Court: Call your next witness.

Mr. Cody: You may be excused, Mr. Bolton.

[fol. 296] The Court: Let me ask this question, Mr. Schroder, Mr. Lockerman. Can Mr. Bolton be excused?

Mr. Schroder: Yes, Your Honor.

The Court: You have no further use for him in the trial?

Mr. Schroder: I want to accommodate Mr. Bolton. Let me confer.

The Court: I mean, if you—

Mr. Schroder: I don't have any, but let me check it out.

The Court: I presume he will be in Athens and can be available in a couple of hours.

Mr. Bolton: Yes, sir.

Mr. Lockerman: I believe he said he would be in Athens available?

JACK C. GORDAY called as a witness on behalf of the defendant, after having first been duly sworn, testified by deposition as follows:

[fol. 297] Direct examination.

By Mr. Davis:

Q. Would you state your name, please?

A. Jack C. Gorday.

Q. Where do you live, Mr. Gorday?

A. Tuscaloosa, Alabama.

Q. Are you an employee of the Southern Bell Telephone Company?

A. Yes, sir.

Q. What is your position with the company?

A. Group manager.

Q. Where?

A. Tuscaloosa.

Q. Any particular district or division?

A. The Tuscaloosa group, which comprises Tuscaloosa, Utah, Livingston, York.

Q. By subpoena we requested the toll ticket representing an alleged long distance telephone call made by Paul Bryant to Wallace Butts on Sunday, September 16, 1962, from the University of Alabama switchboard, number 752-7441 to either LI3-4351 or LI6-0262 in Athens, Georgia. Do you have a toll ticket representing such a call?

A. Yes.

Mr. Schroder: If it please the Court—

The Court: Yes.

Mr. Schroder: —may I ask a question? I believe that is toll ticket that is already in evidence. I don't see any sense [fol. 298] in going back over the testimony. Isn't that the toll ticket that is in evidence?

Mr. Joiner: May it please the Court—

The Court: My—go ahead.

Mr. Joiner: The toll ticket is in evidence, but the purpose of reading this testimony is to tie in the credit card number of Coach Bryant to the document which has already been admitted.

The Court: Yes, sir. I remember asking that question yesterday, and they said the evidence would tie it in. Yes, sir; go ahead. You don't insist, do you?

Mr. Schroder: No, sir.

The Court: All right.

By Mr. Davis:

Q. Do you have a toll ticket representing such a call?

A. Yes.

Q. May I see it, please? Is this a record that is kept in the ordinary course of business? That is, you have such a record on all telephone calls that are made on all long distance telephone calls that are made?

[fol. 299] A. Yes, sir.

Mr. Joiner: Mr. Davis states: "I will ask the Court Reporter to identify, as Defendant's Exhibit 1, the photostatic copy of the front and back of this toll ticket that you have handed me." Your Honor, I'd like to state that we do not intend to offer that exhibit since it is the one that we have previously offered. It's already been admitted in evidence.

The Court: All right, sir.

Mr. Schroder: That was admitted without objection.

The Court: Yes, sir.

By Mr. Davis:

Q. Mr. Gorday, I would like, while we both look at Defendant's Exhibit 1, for you to indicate what information is on this toll ticket designating, as clearly as possible, the position on this copy that you are reading from? Do you follow me? In other words, I want to know what informa-

tion is on this card as you interpret it, and I want you to tell me what place on the card you are looking at, whether it is the front, side or back side, lefthand corner or right-hand corner?

A. I understand.

Q. All right.

A. I am looking at the front side of the card.

Q. Which is the front side?

[fol. 300] A. This is the side that gives the information as to the city called and the city from which the call was placed.

Q. Well, on the photostatic copy identified as Defendant's Exhibit 1, it would be the—

A. The top portion is the front side of the card.

Q. All right.

A. This is a record of a call placed to Athens, Georgia, to telephone number LI 6-0262. The call was placed from Tuscaloosa, Alabama, and was billed to a credit card, the credit card is No. 752-7441B1-K54.

Q. You said the call was made to a certain number in Athens, Georgia. How do you determine what number it was made to?

A. Across the face of the card there at the very top is one, two, three, four, five, six, seven items over, it says to C. O. That is to Central Office. And then L I 6 and the next little block says to No. 0262. So, the complete number is LI 6-0262.

Q. I see. Does this card indicate here who placed the telephone call?

A. No, sir; it does not.

Q. The credit card you referred to, to whom does that belong?

A. Our records indicate that card was issued to—let me give it to you exactly; Paul W. Bryant.

Q. Does the card indicate the person that the call was made to?

A. Yes, sir. Written in on the card is Coach Wallace Butts.

Q. Who would make that notation in the ordinary course of business?

A. Our operator would if the information was volunteered. She would not necessarily make any notation.

Mr. Joiner: If it please the Court, I'd like to read now from Page 14 of the deposition, a stipulation as to certain telephone calls which are summarized in the deposition, and then I would like to read the information pursuant to that stipulation as to one call.

The Court: All right, sir. Where is your stipulation?

Mr. Joiner: It is on Page 14, Your Honor.

The Court: All right.

Mr. Joiner: This is stated by Mr. Davis: "And it has been agreed by the attorneys for the parties to this action that the witness and his assistant or assistants may read from the toll tickets produced pursuant to this subpoena certain information, the same to be transcribed by the Court Reporter and made a part of this deposition without counsel for either party being present; it is further agreed that the information to be read from the toll tickets shall be transcribed in column style and consist of the following facts: A column indicating the date of the call, a column indicating the city and phone number where the call originated and also the person making the call, if any or all of that information is available; a column indicating the city and phone number called and the person called, if any [fol. 302] or all of that information is available; and a column indicating the time the connection was made and the duration of the call. Counsel further agree that the list of all calls compiled as above stated shall be an accurate account of the records produced and admissible in evidence as such if otherwise admissible."

Then I should like to read from Page 17, Your Honor.

The Court: All right, sir.

Mr. Schroder: 17?

Mr. Joiner: It is the last call on that page. "Date: Sep-

tember 9, 1962, from 959-5327, Tuscaloosa, Alabama, to Athens, Georgia, Liberty 6-0262, Wallace Butts, residence; time: 2:20 p.m.; duration of call: 28 minutes."

* * * * *

JOHNNY GRIFFITH called as a witness on behalf of the defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cody:

Q. Your name is Coach Johnny Griffith?

A. Yes, sir.

Q. Where did you attend college, Coach?

A. University of Georgia and South Georgia College.

[fol. 303] Q. When did you finish?

A. Finished in the summer of 1949.

Q. Did you play football when you were at the University?

A. I played my freshman year there; yes, sir.

Q. Did you subsequently play at South Georgia College?

A. Yes, sir; I did.

Q. How long have you been in the coaching profession?

A. Since 1949.

Q. What year?

A. Since 1949.

Q. Will you state to the jury what your experience has been in coaching?

A. I began coaching at South Georgia College as backfield coach in 1949; became head coach at South Georgia College in 1950 through 1953; came to the University of Georgia in 1954 as assistant freshman coach; in 1955 at Furman University as backfield coach; I returned to the University of Georgia in 1956 as assistant coach; I was named head freshman coach in 1959 and '60; head coach of the University of Georgia in 1961.

Q. Are you the head football coach there now?

A. Yes, sir.

Mr. Cody: Can you hear all right?

Juror: Yes, sir.

[fol. 304] The Court: Can all of you jurors hear Coach Griffith? All right, sir.

By Mr. Cody:

Q. Coach Griffith, I show you what has been identified as the Defendant's Exhibit No. 12. Will you state to the jury whether or not you remember seeing those notes before?

A. Yes, sir; I did.

Q. When and where?

A. I don't recall the date. It was the weekend of the Southeastern Conference meeting in Atlanta at the Biltmore Hotel on a Thursday afternoon approximately around 5:30.

Q. Who turned those notes over to you?

A. Mr. George Burnett.

Q. What did you do with them thereafter?

A. I showed them to Mr. J. D. Bolton the same night, and turned them over to President Aderhold on Saturday morning of the same week.

Q. Coach Griffith, was the 1962 game with the University of Alabama the first game of the season?

A. Yes, sir.

Q. And that was to be played on September the 27th?

A. I recall it was the 22nd; yes, sir.

Q. In Birmingham?

A. Yes, sir.

Q. What—prior to the beginning of that season, what preliminary practice would your team normally go through, I mean, so far as the weekly period is concerned? You would have spring practice; I am trying to get at that first. [fol. 305] A. Yes, sir; we had spring practice that year which consists of four weeks of spring practice. The squad reported on the 30th. We had picture day on the 31st, and—

The Court: The 30th of August?

The Witness: The 31st of August.

The Court: 31st of August.

A. (By the witness) We began practicing on the 1st of September, and we played the game on the 22nd.

Q. Then you had how many weeks of spring training, spring practice?

A. Four weeks.

Q. And then in the fall that would give you about three weeks?

A. Yes, sir.

Q. Did you have many new men on your team for the '62 season?

A. Yes, sir; we had approximately fifteen or sixteen sophomores that we counted on out of the twenty-five or twenty-six boys that we would play during the season.

Q. How many—Coach Griffith, how many formations, basic formations does a football team use during a seasons, approximately how many?

A. Approximately seven or eight or nine, somewhere along there. That is what we use.

Q. With some variations in each formation?

A. Yes, sir.

[fol. 306] Q. How many did—how many formations did you train your team for for the Alabama game, this upcoming Alabama game?

A. Two formations.

Q. Why do you limit it to two?

A. Well, we feel that two is satisfactory, possibly sometimes three, and we don't think we can handle any more offense plans than three formations.

Q. Is that by reason of the fact that boys themselves can't take in more than that?

A. Well, in our case last year; yes, sir; that would be true because of the sophomore people we had on the football team.

Q. Take a look at that Exhibit 1 showed you, Coach Griffith, and try to refresh your recollection now as to—

let's take it back to this meeting that you had at the Biltmore Hotel. Will you point out to the jury whether or not there is any reference on those—on that exhibit to either one or both of the formations that you had trained that team for?

A. Yes, sir; there are two notes that indicate the two formations that we used in the ball game.

The Court: That you used or planned to use?

The Witness: Planned to use and did use in the ball game.

By Mr. Cody:

Q. Did you—could you state to the Court what those formations are?

A. We used a three-yard slot in the ball game and the note reads "slot to right, ends normal (3 yards.)" We use what we call—

[fol. 307] Q. What page are you on?

A. These are not numbered.

Q. Mine is in the same order as yours.

A. I will have to count them. I am on Page 5.

Q. State to the Court the other formation that you referred to.

A. I am on the last page which is Page 8, "slot right, left end out. 15 yards."

Q. Is that last item what you coaches sometimes refer to as a pro-set?

A. Yes, sir.

The Court: As what?

The Witness: A pro-set.

The Court: Pro-set?

The Witness: Yes, sir.

By Mr. Cody:

Q. P-r-o, hyphen, s-e-t?

A. Yes, sir.

The Court: What is that, professional-set?

The Witness: Yes, sir; it is a terminology we use to describe an offensive formation. Other schools call it maybe something different; I don't know.

[fol. 308] By Mr. Cody:

Q. What reactions did you have to these notes when you saw those two items that you have mentioned to the Court?

Mr. Schroder: If the Court please, I don't think the reaction of the witness, what reaction he might have would be admissible.

The Court: Yes, sir; I don't think that is proper.

Mr. Cody: I withdraw the objection—I withdraw the question.

The Court: All right, sir.

By Mr. Cody:

Q. Coach Griffith, will you look on Page 1? Do you see the name "Reismueller" mentioned?

A. I don't understand you.

Q. Do you see the name "Reismueller" or "Rissmiller" mentioned?

A. Yes, sir.

Q. What is his correct name?

A. Rissmiller.

Q. Rissmiller?

A. Yes, sir.

Q. Was he a sophomore?

A. He was—he was starting his sophomore season; yes, sir.

[fol. 309] Q. You don't—freshmen are not permitted to play on the varsity team; is that right?

A. That is correct.

Q. So this would have been his first year on the team?

A. Yes, sir.

Q. What sort of a player was he?

A. Well, he is potentially a real fine football player, and we think he will be a real fine football player.

Q. Do you see anything in these notes other than the two formations that you have referred to which you particularly noticed?

A. I am not sure I understand your question.

Q. Turn to Page 2, the second item. Will you read that to the jury?

A. "Optional left pass if can block man on corner, keeps running."

Q. What does that mean to you?

A. Well, optional left pass is a terminology that I was familiar with.

Q. Was that terminology used by you in the 1962 season?

A. No, sir.

Q. Who used that terminology? Was it used before at Georgia?

A. Yes, sir.

Q. When?

A. It possibly could have been used in 1961; I don't recall. It had been used before that time, I don't know how long.

Q. Whose terminology was that?

A. Well, it was used by Coach Butts.

Q. Have you ever used that terminology yourself in the training of these boys?

[fol. 310] A. Not to my knowledge, in '61; definitely no in '62.

Q. On Page 2, that third item, "Well disciplined ball club": does that mean anything to you?

A. No, sir.

Mr. Schroder: I didn't understand the answer.

The Court: He said "No, sir."

Mr. Schroder: Thank you.

By Mr. Cody:

Q. Take the next. What about the next item at the top of Page 3?

A. "On side guard pulls on sweep"?

Q. Yes.

A. We pulled the on side guard on sweeps in the second half of the ball game against Alabama.

Q. Was that a part of the training you had given your team?

A. Yes, sir.

Q. Does that next item mean anything to you?

A. No, sir; it does not.

Q. Do you have a young man on your team or did you have one last year named Woodward?

A. We have a boy named Woodward; yes, sir.

Q. Turn to the third item there on Page 3, "Woodward commits fast—safety man"; did he play safety, the safety man position on your team?

A. Yes, sir.

Q. What does the term—in football terminology, what [fol. 311] does it mean by "commits fast"?

A. Well, it means that the halfback or safety man whoever is in the secondary, in this case refers to the safety man, that he comes up fast on running plays, commits himself from his original position to come up and make the tackle.

The Court: What would that do, leave safety open?

The Witness: Possibly so if they were throwing the ball; yes, sir.

By Mr. Cody:

Q. Was that a habit of Woodward?

A. Yes, sir; it was.

Q. Did you try to correct it?

A. Yes, sir; we have been trying to correct it since he came to the University. He is an aggressive type boy that likes contacts, and it is rather hard to try to discourage him from trying to do that; yet, it is definitely a disadvantage in playing secondary.

Q. When you say "contact," you mean to make a tackle?

A. Yes, sir.

Q. That last item on Page 3, "Weak defense, anybody except Blackburn"; did you have—did you have a man on your team named Blackburn?

A. Yes, sir.

Q. Is that the way you pronounce his name?

A. Yes, sir.

Q. What position did he play?

A. He played left halfback normally. However, we did swing him from left and right halfback so he played both halfbacks.

[fol. 312] Q. Does that item mean anything to you?

A. Well, we had counted on him being our best defensive back from his previous experience over the 1961 season.

Q. This was his second year then?

A. He was a senior; it was his third year.

Q. Was he the best defensive back that you had?

A. We thought that he possibly would be, but he was sick off and on before the Alabama game, and didn't get the work he needed actually to be ready to play against Alabama.

Q. On Page 4, "Baer slots right, splits right end out"; does that mean anything to you?

A. No, sir.

Q. You have a man on your team named Baer?

A. We have a man named Babb, B-a-b-b.

Q. What position did he play?

A. He played both ends, left and right ends.

Q. This next item, Coach Griffith, on Page 4, "Long count, left half in motion"; does that mean anything to you?

A. We have a halfback in long motion count, what we call a four motion count, with both halfbacks, left and right halfbacks, and we throw an eighteen and nineteen overpass off of it.

Q. What is the purpose—difference between a long and a short count?

A. Well, the ball is snapped at different positions where the halfback is as he goes in motion; on a short motion he is normally about three or four yards from his original position, and in long motion he is normally about ten to twelve yards beyond the original position that he lined up in.

Q. Would that have any purpose in trying to draw your opponent off side?

[fol. 313] A. It will cause him to be off adjustment in the secondary to a certain extent, not to draw them off sides; no, sir.

Q. You see on Page 4 reference to Porterfield?

A. Yes, sir.

Q. Was he a new man?

A. He was an upcoming sophomore; yes, sir.

Q. Was he one of your best players?

A. He was our best back; yes, sir.

Q. Was he what you would call a running back?

A. He was our best running back; yes, sir.

Q. Turning over to the next page, Coach Griffith, you heretofore referred to that second item as one of your formations, "slot to right, ends normal (3 yards)"; what is the significance, if any, as to the distance that the ends spread, whether it is three, five or seven yards; what is the significance?

A. Well, it makes a difference in regard to the defensive end as to where he will line up, whether he will line up on his inside head-up or outside shoulder, and it would depend on the width of the slot or the split of the end as to where he would line up. Some teams have certain rules; we have our own rules in regard to that.

Q. That is one of the formations that you referred to?

A. Yes, sir.

Q. Turning back to Page 4 just a moment, the item in the middle of the page, "Long count, left half in motion"; was that one of Georgia's plays for 1962?

A. Yes, sir.

Q. Had you trained your team for the Alabama game to use that play?

A. Yes, sir.

[fol. 314] Q. At the bottom of Page 5, Coach Griffith, does that last item there—can't tell whether it is one or several items—does it mean anything to you?

A. Not the way it is written; no, sir.

Q. Did you ever know Mr. Burnett prior to meeting him at the Biltmore Hotel when you were shown these notes for the first time? Did you ever know him?

A. No, sir; I did not.

Q. You don't know whether he knows much about football or not?

A. I couldn't answer that; no, sir.

Q. Turn to Page 6 just a minute. Do you see a reference there to a notation, "Can't quick kick"?

A. Yes, sir.

Q. Who did the kicking for the Georgia team principally?

A. Jake Saye.

Q. S-a-y-e?

A. Yes, sir.

Q. Was he what you coaches would describe as a quick kicker?

A. Not from his position; no, sir. We had to use a different formation to quick kick from because he was a quarterback.

Q. You mean by that quarterback is too close to the line to quick kick?

A. Yes, sir.

Q. Am I correct, then, in assuming that from his quarterback position he could not quick kick?

A. No, sir; we had to pull him into a type of quick kick formation that we used, and it is a double wing with a quarterback lining up about eight yards deep directly behind the center.

[fol. 315] Q. Now, when you do that, doesn't that tip off your opponent to the fact that you are kicking?

A. It could tip them off that we could quick kick from that, but when Saye lined up in that formation, we could

do one of three things off of it, that is, quick kick and throw and run off of it.

Q. Then, is it true that you did during the '62 season use some quick kicks?

A. Not from the quick kick formation that most teams use; no, sir; we went to this formation to do our quick kicking.

Q. Did you not have anybody that could do any quick kicking from a normal formation?

A. No, sir; we did not.

Q. Does that next item after the "quick kick" make any sense to you?

A. "Slot right, right half on fly, screen to him," it is a formation we used; however, we did not screen to the right halfback as the note reads, "To him," and I assume the note—

Mr. Schroder: If the Court please, it is not up to this witness to assume what the notes say, and he should construe what is in the notes as they are and not assume—

The Court: I will let him interpret the notes. I mean, he is an expert.

The Witness: "Slot right, right half fly, screen to him," we had a slot with a right halfback flying; however, we screened to the left halfback and not to the right halfback.

[fol. 316] By Mr. Cody:

Q. This "29-0 series," does that mean anything to you?

A. No, sir; we have an 029 series, not a 29-0.

Q. What's that? What is an 029?

A. It is what we call our outside belly series with the quarterback reverse pivoting, faking to the fullback, and either pitching off to the opposite halfback or keeping the ball and running.

Q. It is a short pass?

A. I beg your pardon?

Q. If it is a pass, if it develops into a pass is it a short pass?

A. We didn't throw off of this formation.

Q. I see.

A. It is a running series.

Q. At the bottom of Page 6 do you see that reference, "Babb catches everything"?

A. Yes, sir.

Q. What does that mean to you?

A. We had built our passing attack around Babb and had used him also as a split end in this particular ball game from a pro-set. In other words, he would line up if it was a slot, and he—the right end, he would stay in that slot if it was a slot formation. If we called a pro formation, he would always be the end that went out anywhere from ten to fifteen yards and split, regardless of which side of the field it was called on, right or left. We planned—we built our passing attack around him.

Q. Was that because he was the best receiver you had?

A. Yes, sir.

Q. I believe you have already mentioned, Coach Griffith, [fol. 317] this first item on Page 7; that is one of your formations?

A. Yes, sir.

Q. Does that next item make any sense to you?

A. "Georgia" with an arrow pointing to "drop end off, contain with tackle (defense)"; we drop our ends off and contain with a six loose defense.

Q. Is that part of the training that you gave this team for the Alabama game?

A. Yes, sir.

Q. Coach Griffith, you have been in the, according to your testimony, you have been in the coaching business quite some time. Will you state to the jury whether or not in your opinion the information which you have mentioned and which has been taken from these notes would be helpful to an opponent of your team?

A. If the information like this were given, the two most important things to me in the notes are the two formations that we planned to use in the ball game. Our preparation

during the summer and during the fall is based on defensively trying to determine the types of offensive sets that the opposing team will use and try to set the defenses for the possibility of the number of offensive formations that they have shown over the years or particularly in the last season.

Q. Would the information alone with respect to these formations that you mentioned, would that, to some extent, limit the preparation that was necessary on the part of Alabama?

A. Yes, sir; it would. It would eliminate them making preparation and spending time on the practice field to prepare against any of the possibilities of formations that we had shown to try to stop.

[fol. 318] Q. Coach Griffith, if I took a blackboard over here where you could draw a diagram of it, could you explain to the jury what these two formations are?

A. Yes, sir.

The Court: Would the black one be larger? Would it be more convenient?

Mr. Cody: Which one would you prefer?

The Witness: It is immaterial to me.

Mr. Cody: That is all right. Where is that chalk?

The Crier: On the board.

Mr. Cody: Let's get up here where we can see it a little bit better. Can you see that all right?

Juror: Yes, sir.

By Mr. Cody:

Q. Which formation are you referring to first?

A. This is the slot formation with the right halfback between the offensive right end and the right tackle.

Q. Did I understand you to say that it is important to know how far this end gets out from the tackle?

[fol. 319] A. Yes, sir.

Q. Why is that important?

A. Well, from a defensive standpoint it is the distance

he splits as to whether the ends go out with him and still help in the off tackle hold or whether it is right enough where he can play his inside and not be hooked on a sweep that the fullback might try to back him out or the end might hook him in.

Q. Any other comments you want to make descriptive of that particular formation?

A. No, sir.

Q. Let's pass on to your pro-set, as you coaches call it.

A. This is pro formation with the same slot on this side and the only difference is, the left end in this particular formation, because this is to the left, is split out to ten or fifteen yards, depending on the position of the field. In other words, if this were a half marker over here, he normally would not be able to go fifteen yards because he would go out of bounds. This formation is the same as this with the exception of this end who would normally line up here as he is lined up here, will split out approximately ten or fifteen yards.

Q. You can have a seat now, Coach Griffith. Did Wallace Butts have anything to do with the football team in 1962?

A. No, sir.

Q. How many coaches did you have there, assistant coaches?

A. We had ten.

Q. How many men did you have on the squad?

A. On our varsity squad we carried normally around forty-two or -three players.

[fol. 320] The Court: Some of your coaches would be team and freshmen; you didn't have ten varsity coaches, did you?

The Witness: No, sir.

By Mr. Cody:

Q. How many freshmen coaches did you have?

A. We had one full-time and normally we have two or three student assistants.

Q. Gives you about six varsity coaches?

A. Seven; I believe I am correct on that.

Q. Is Coach Frank Inman one of your assistant coaches?

A. Yes, sir.

Q. What part of your system does he teach?

A. He is now the offensive backfield coach, and he is in charge of the recruiting program.

Q. Is Coach Leroy Pearce one of your assistant coaches?

A. Yes, sir.

Q. What part of the team does he handle?

A. Now, he handles the defensive linebackers and the defensive ends. Last year, 1962 season, he coached the ends both ways, offensively and defensively.

Q. How long has Frank Inman been with you?

A. He came to the University of Georgia in July of 1962.

Q. How about Pearce?

A. Pearce came in the spring, I believe, in March; I am not sure; March of 1962.

Q. Coach Griffith, is it true that as early as the first game of the season the coaches themselves don't know very much about the players?

[fol. 321] A. It depends on how many sophomores you have on your football team. We should have a pretty good picture after spring practice is over in regard to the juniors and seniors. Your sophomores are untested, and you normally do not know how they are going to react to competition in the Southeastern Conference.

Q. Did you have an abnormal number of sophomores in '62?

A. I would say we did; yes, sir.

Q. Is it customary for one coach to talk to the coach of the opposing team a week or ten days before a game?

A. I would depend upon what they were talking about.

Q. Would it be customary to talk about players?

A. Well, that is difficult to answer; in general it is whose players and—

Q. What about the characteristic of players?

A. No, sir; I would say it would not be normal.

Q. What about formations?

A. In my opinion it would not be; no, sir.

Q. What about plays?

A. No, sir.

Q. When I use the term "play", does that mean to you a part of a formation or a variance of a formation?

A. Well, I assume you are talking about offensive plays?

Q. Yes.

The Court: Offensive plays run off of a certain formation?

The Witness: Well, offensive plays are run off of different types of formations. You can run a lot of plays off of—same type plays off of those formations.

The Court: You would have a number of plays run off of those two formations you say you prepared for the Georgia-Alabama game?

The Witness: Yes, sir.

The Court: And all of your plays would be run off of those two separate formations?

The Witness: Yes, sir.

By Mr. Cody:

Q. If these—if these notes that I have shown you and which have been identified, if they are genuine, does that disclose just general football talk?

A. I would not say so; no, sir.

Q. Did Coach Butts ever tell you that he, in September of 1962, that he was calling Coach Bryant about anything?

A. Not to my knowledge; no, sir.

Q. Did he ever tell you that Coach Bryant had called him any?

A. No, sir.

Q. Coach Griffith, it is customary, I believe, for coaches to scout an opposing team and try to get as much information as they can about their potential; is that correct?

A. Yes, sir.

[fol. 323] Q. Sometimes you coaches exchange pictures of

a previous game so as to minimize the difficulties; is that correct?

A. Yes, sir.

Q. Would the movies of a game normally show the action of a secondary defense?

A. Ours would show some of it at times and some of it would not. It would depend on the school taking the film and the type of equipment they were using. If they are using wide angles, it would consistently show the secondary. We do not use the wide angle.

Q. What do you mean by "wide angle", take it from down near the goal post, that direction?

A. No, sir. It shows the width of the field, and it will cover the offensive team in an offensive set and a defensive team entirely in its defensive set which will carry the lens or coverage approximately twelve or thirteen yards deep. I am not too familiar with it, but I have seen it and it shows the reaction of the secondary.

Q. Would it have—would it be able to show the tendencies of a particular player?

A. Yes, sir.

Q. Being the first game of the season, your opponent would have very little scouting information about your team; is that true?

A. In regard to the preparation for the coming game he would have—should have no information. He would have only the information he compiled from films of our games in the last season.

Q. Well, isn't it true that even if you had a picture of the previous season's game, you might have corrected defects that appeared in that game?

A. Yes, sir.

[fol. 324] Q. Does a movie of a game show pass patterns, Coach Griffith?

A. Well, I go back to the original answer. It depends on the type of lens you are using, and it is possible that it definitely would. In ours, sometimes we get the pass pattern, the entire pattern; sometimes we don't.

Q. You would have to show large portions of the field to do that, wouldn't you?

A. Yes, sir.

Q. Would the movies of a game show the distance of these splits?

A. It would show it, but it is rather difficult to look at a film and actually know the exact split of a line or a back or a split end or anything along those lines.

Q. Is that—is that because the cameras are at a bad angle?

A. No, sir; it is—in my opinion, it is because of the distance the camera is from the field in trying to cover the offensive and defensive team. It is just difficult to determine.

Q. Would the film of—would the picture of a game indicate the particular speed of a runner in comparison with other players?

A. Yes, sir; it could; yes, sir. It will—I will say it would.

Q. Do you have secret practice?

A. Yes, sir.

Q. How long before the first game of the season do you start that secret practice?

A. Beginning of the practice.

Q. September the 1st?

A. Yes, sir.

Q. In your opinion, Coach Griffith, would it be helpful [fol. 325] to an opposing team to know something that would keep them from being penalized, receiving penalties?

A. Yes, sir.

Q. Doesn't a game sometimes turn, that is, whether you win or lose, sometimes on as small an event as one penalty?

A. I have seen such games; yes, sir.

Mr. Schroder: I didn't hear that last answer; I'm sorry.

The Court: He said he had seen such games—

The Witness: I have seen such games.

The Court: —where it turned on one penalty. All right, sir, Mr. Cody.

Mr. Cody: Just about through, Your Honor.

By Mr. Cody:

Q. Coach Griffith, if Rissmiller, being a sophomore, was a top flight runner and you had no previous experience with him on account of his being a sophomore, would it be helpful, in your opinion, to an opponent—

The Court: Rissmiller was a tackle, wasn't he?

[fol. 326] By Mr. Cody:

Q. I mean any player—well, we will put it “any player”—to know his potential?

A. Well, I will say this about Rissmiller. I don't think that it was any particular secret that he was predicted to be a real fine football player, because he had been selected, as I recall, as possibly the lineman-of-the-year in the Conference as a sophomore.

Mr. Cody: I believe that's all.

The Court: All right, sir, Mr. Schroder; you want to remove that blackboard?

Mr. Schroder: A couple of questions I would like to direct to the witness about these formations a little later, so I will move it, but bring it back.

Cross examination.

By Mr. Schroder:

Q. Coach Griffith, who gave you your first job at the University of Georgia?

A. Coach Wallace Butts.

Q. That was in 1954?

A. Yes, sir.

Q. Did Wallace Butts also assist you in getting a position at Furman University?

A. To my knowledge he did; yes, sir.

Q. He did?

A. Yes, sir.

Q. When you returned to Athens in 1956 you returned to [fol. 327] work for Wallace Butts?

A. Yes, sir.

Q. In 1954, for a moment we will return to that year, when Wallace Butts gave you your first job at the University of Georgia, you at that time asked him if there was any way that Wallace Butts could give you financial aid, didn't you?

A. Yes, sir.

Q. And he arranged financial aid for you, didn't he?

A. As an assistant to the freshman team; yes, sir.

Q. Has he ever given you any other sort of financial aid?

A. In the form of loans which have been repaid.

Q. I didn't understand you, sir.

A. In the form of loans which have been repaid, with the exception of around three hundred fifty dollars.

Q. You mean Wally Butts has made you loans of money?

A. Yes, sir.

Q. When you needed it?

A. Yes, sir.

Q. And you still owe him some money?

A. Yes, sir.

Q. Did that quite willingly, did he not?

A. Yes, sir.

Q. He was anxious to help, was he not?

A. Yes, sir.

Q. Has Wallace Butts ever gone with you to the bank and endorsed a note so you could get a loan from the bank?

A. I don't recall his going to the bank. He has endorsed some notes for me; yes, sir.

Q. Whether he went to the bank or not with you, he did [fol. 328] endorse the loan for you to get—endorsed a note in order for you to get the loan, didn't he?

A. Yes, sir.

Q. Has Wallace Butts ever made payments to the bank on those loans when they were in arrears?

A. Yes, sir.

Q. In your behalf?

A. Yes, sir.

Q. Taking your testimony item-by-item, you testified

on direct-examination in response to a question put to you that the optional left pass pattern was something Wallace Butts used to use when he was head coach at the University, but which you did not use after you became head coach; is that right?

A. I said that we possibly did use it in 1961; I don't remember using it, but I definitely said we did not use the terminology in 1962.

Q. Did you use the terminology in 1961?

A. I said not to my knowledge we did not. We possibly could have.

Q. Let me refresh your recollection. Let me hand you a document here and ask you if you can identify that document, and, if so, let me know what it is?

A. It is the offensive plan for the Miami game in 1961.

Q. The offensive game plan for the Georgia team to employ in the Miami University game in 1961?

A. Yes, sir.

Q. Look at that game plan—who prepares the game plan?

A. The offensive backfield coach, Charlie Trippi, along with myself.

Q. Along with you?

A. That's right, sir.

Q. All right. Look in that game plan for the Miami game [fol. 329] of 1961, and see if you do not have in that game plan a pass pattern described by you and Charlie Trippi as optional left?

A. Yes, sir; we do.

Q. All right, sir, is there any doubt in your mind now that the term "optional left" was used by the University of Georgia in its football plans for 1961?

A. No, sir; there wasn't.

Q. All right. The previous question or my last question was this, and there may have been some misunderstanding as to what the answer was. Is there any doubt in your mind now, after seeing the Miami game plan for 1961, is there any doubt in your mind now that the term "optional left pass" was used by the University of Georgia during the year 1961?

A. I said that we possibly could have used that. I did not say that we didn't or we did. I don't know if that is an accurate game plan or not. I couldn't answer that. It appears to be; yes, sir; I would accept it as just looking at the front page.

Q. Well, there is a reference to an optional left pass in this game plan, is there not?

A. Yes, sir; there is.

Q. Well, is there now some doubt in your mind?

A. No, sir.

Q. All right, sir. These two diagrams which you have placed on the board here which you have described the top one as a slot formation—

A. Slot right; yes, sir.

Q. Slot right?

A. Yes, sir.

Q. And the bottom one is the pro-set?

A. Yes, sir.

Q. This slot right, was that something new for the [fol. 330] Georgia—that Georgia was planning for the Alabama game?

A. I am not sure I understand your question in regard to that formation.

Q. Was the slot right formation something new that Georgia was preparing to use for the first time in the Georgia-Alabama game of 1962?

A. Well, I still don't understand your question. You mean by "the first time", had we ever used the formation? It was something new as far as preparing for the Alabama game; yes, sir.

Q. You did not use that in 1961?

A. Yes, sir; we used it in 1961.

Q. Well, it wasn't something new, then, was it?

A. Not in the sense of the word being a new formation; no, sir.

Q. Did you use this slot formation that you have described here in 1960?

A. I was not the head coach then.

Q. No, sir; but you were on the coaching staff, weren't you?

A. I was the head freshman coach, and we used it at the University of Georgia; to my knowledge we did use it; yes, sir. I don't know whether it was a three-yard slot or a five-yard slot; I couldn't answer that.

Q. You used it in 1961 in every game you played, didn't you?

A. I couldn't say that we used it in every game. We used it some; yes, sir.

Q. Name me a game you didn't use it in? You were head coach in 1961.

A. Well, I couldn't—I couldn't recall.

Q. It was used very often in 1961, wasn't it? That is a fair statement, isn't it?

[fol. 331] A. Yes, sir.

Q. The lower formation that you have diagrammed here known as the pro-set, was the Alabama game in 1962 the first time the University of Georgia had used that formation?

A. No, sir.

Q. It had used that formation during the season of 1961 also, had it not?

A. Yes, sir.

Q. You have already testified at some length about scouting being done by the opposing teams. You will assume that Coach Bryant would scout your team during '61 just as you were scouting his team in 1961, wouldn't you?

A. Yes, sir.

Q. And if Coach Bryant scouted your team in 1961 they would have seen those same two formations, wouldn't they?

A. Yes, sir.

Q. As a matter of fact, those same formations are used by Alabama, aren't they?

A. Yes, sir.

Q. Exactly, aren't they?

A. No, sir; they use what they term as the two-yard slot rather than a three-yard slot.

Q. That much difference?

A. Yes, sir.

Q. How about the pro-set?

A. The same.

Q. They used that repeatedly in the year '61 and also through the year '62, didn't they?

A. Yes, sir.

Q. Wasn't anything secret about those formations, was there?

A. No, sir.

[fol. 332] Q. Practically every team in the Southeastern Conference uses those same formations?

A. I couldn't tell you about every team.

Q. Do you know of one that doesn't use it?

A. I couldn't tell you of one that doesn't use it.

Q. You play most of them, don't you?

A. We play six of them.

Q. Do you know any of those six that don't use those two formations?

A. Not offhand; no, sir.

Q. Was there any formation that you coached the university of Georgia football players to use against Alabama in 1962 that the Georgia team did not use in 1961?

A. No, sir.

Q. When you refer to the slot end out three yards, that doesn't mean that that end is going to play exactly three yards out from the tackle on every occasion that the formation is used, does it?

A. That is what we strive to get, three yards; yes, sir.

Q. Then it would be inaccurate to say that the end moves from three yards on one occasion to two, and from three yards on another occasion to five, in order to accommodate his own play against the defensive tackle; would that be an inaccurate statement?

A. I would like for you to repeat that again; I didn't get it.

Q. All right, sir. The split end—strike that. On the normal slot where the right end is away from the right tackle and there is a back between the end and the tackle—

A. Yes, sir.

Q. —the end in this position has a tackle on the other [fol. 333] team playing opposite him whom he has to block on occasions, doesn't he?

A. Not from a slot formation; no, sir.

Q. What does he do?

A. The tackle won't come out and line up on the end there.

Q. It will be the end that will line up.

A. Yes, sir; yes, sir.

Q. All right, sir. He has got a blocking assignment, this end has—

A. Yes, sir.

Q. —against the man playing opposite him, doesn't he?

Q. And if the man is where he can't get a good block at him, he will move his own position to accommodate him, won't he?

A. No, sir; because on a slot formation the end will block in, and in our plan the full back will block on the man lined up head on or inside or outside on the offensive end.

Q. All right. Let's put it simply. You know Mickey Babb?

A. Yes, sir.

Q. He is your best end, I believe you said a while ago?

A. Yes, sir.

Q. And Mickey Babb played all through the Alabama game, didn't he?

A. Yes, sir.

Q. He played approximately fifty, five-0 minutes?

A. Yes, sir.

Q. Both offensive and defense?

A. Yes, sir.

Q. Mickey Babb, when he was playing in the end position on slot right, was he or was he not, throughout the [fol. 334] Alabama game, three yards from the tackle?

A. Well, I couldn't answer that.

Q. Well, you were there, weren't you?

A. Yes; but I can't see from the sideline whether he is lined up two and a half or three, but we strive to get three.

Q. Yes, sir. Mickey Babb is going to testify in this case. You know he is under subpoena, don't you?

A. I did not know that; no, sir.

Q. Now, if Mickey Babb is out five yards on many occasions, four yards on other occasions, two yards on other occasions, and three yards on other occasions, those occasions where he is not three yards out, he is not playing the way you coached him; is that right?

A. I would say so; yes, sir.

Q. All right, sir. But you wouldn't say he wasn't playing that way through 1961 and 1962, would you, because you said you couldn't see from the sidelines?

A. Well, I can't see from the sidelines whether he is lined up two and a half or three or four, but we strive for the three-yard slot.

Mr. Cody: I didn't hear that last answer, sir.

Mr. Schroder: I'm sorry.

The Witness: I said I can't tell from the sidelines on every offensive play in a slot formation whether the end is lined up two and a half or three or three and a half, but we strive for a three-yard slot, and that is what we try to coach them.

[fol. 335] By Mr. Schroder:

Q. When a guard pulls on a sweep—what is a "sweep"?

A. Well, in our terminology it is the quarterback reversed pivoting, pitching to the left half or right half, depending on which way it is going, and the halfback tries to run wide, taking the block of the actual back either on the inside or outside.

Q. Well, in simple terminology, a sweep is a run around the end, isn't it?

A. If he can get around it; yes, sir.

Q. That's right; that is what a sweep means, to sweep out?

A. That's right.

Q. Sweep out around the end if he can get there?

A. That's right.

Q. Now, you have testified on direct-examination about pulling a guard on a sweep. When a guard is pulled, he is supposed to be out leading the interference, is he not?

A. On a sweep; yes, sir.

Q. All right, sir. Now, you say that Georgia pulled an on side guard out in front of the ball carrier to lead the play in the Alabama 1962 game?

A. Yes, sir.

Q. Have you seen the film?

A. Yes, sir.

Mr. Schroder: Before I forget it, may I address—

The Court: Sir?

[fol. 336] Mr. Schroder: Before I forget it, may I address a request to the Coach. When the film is shown in Court, may I request Coach Griffith to be here? I don't have him under subpoena.

The Court: Yes, sir. Well, he is under subpoena, though, isn't he? Well, regardless of who he is under subpoena by, he is supposed to stay here, regardless of who subpoenaed him.

Mr. Cody: Your Honor, we expect to show the films ourselves. We have asked to get them back. Mr. Schroder asked us to let him have them.

Mr. Schroder: Let's get going with them.

Mr. Cody: I have been trying to get them back.

Mr. Schroder: Let's get going with them this afternoon.

The Court: Let me say this. How much longer will you have this witness? I presume before he leaves, why can't you have the films this afternoon?

Mr. Schroder: I would be perfectly delighted if we can have them.

[fol. 337] The Court: Don't you have them?

Mr. Schroder: One of the assistant coaches—

The Court: One of who?

Mr. Schroder: One of the assistant coaches has it.

The Court: Where is he?

Mr. Schroder: He is at the Tech Clinic; isn't that where Mr. Gregory is?

The Witness: Yes, sir.

Mr. Schroder: We won't be able to show the film this afternoon. I am not through with my cross-examination of this witness.

The Court: Well, I wanted to clarify that.

Mr. Schroder: I also want this witness to be present when the film is shown.

[fol. 338] The Court: Well, he will be present unless he is excused.

Mr. Schroder: I mean, present in the courtroom.

The Court: Yes, sir.

Mr. Cody: I'd like to have him here.

The Court: I don't know. If he is not—do you want him to testify?

Mr. Schroder: Yes, sir. I want him where he can point out some of these things.

The Court: No witness is excused, regardless of who subpoenas him, once he is here, until the court is terminated.

By Mr. Schroder:

Q. When preparing a team for a football game to be played, and particularly Paul Bryant in preparing his team to defend against Georgia, you would assume that he would plan a defense against everything that he had seen during 1961, wouldn't you?

A. Yes, sir.

Q. Including your two formations over here?

A. Yes, sir.

Q. Your slot and the pro-set?

[fol. 339] A. Yes, sir.

Q. Now, you have referred to certain things that are—two formations that are in Burnett's notes. Is there anything in those notes that would indicate in any way that those were the only two formations that Georgia would use in its game against them in 1962 against Alabama?

A. No, sir.

Q. Nothing in the notes to indicate that, was there?

A. No, sir.

Q. Did Burnett ever say to you that in this conversation he is supposed to have overheard that Coach Butts said to Coach Bryant, "Now, these are the only two formations Georgia is going to use against Alabama?"

A. No, sir.

Q. The document I showed you a moment ago is known as a game plan, isn't it, in football terminology?

A. It is part of a game plan.

Q. It is part of a game plan?

A. Yes, sir.

Q. The final game plan that any team will—I won't say any game; put it to Georgia; Georgia gets up its final game plan when?

A. After the season starts; it is completed usually by Monday night; parts of it are completed by Sunday night, other parts of it completed during the day on Monday, and Tuesday the final game plan is made.

Q. Monday preceding the Saturday on which the game is to be played?

A. Yes, sir.

Q. That is when your final game plan is formulated?

[fol. 340] A. After the season has started.

Q. It is gotten up?

A. Yes, sir; after the season has started.

Q. On the Alabama game in 1962 your final game plan was not formulated until Monday before the game, was it?

A. Well, our game plan was formulated all through the summer in breaking down films and in meetings ten days before practice session started. The basic game plan was formulated at that time.

Q. I am asking you about the final game plan.

A. The final game plan was formulated on Monday.

Q. Monday preceding the Saturday on which the game was to be played; is that true?

A. Yes, sir.

Q. I believe you testified that you have seen the film of

the Georgia-Alabama game in 1962. On how many occasions would you estimate you have you already seen that film?

A. Approximately four or five times.

Q. Describe briefly how the first touchdown for Alabama was scored and what it resulted from?

A. Well, I believe that in the first quarter they intercepted a pass and hit Wilson, their split end, for a touchdown, and I believe that the next point—

Q. Just one moment, please, sir. The end's name was not Wilson; it was Williamson, wasn't it?

A. Williamson.

Q. And he was known by Georgia to be a very capable end, pass receiver and fast, wasn't he?

A. Yes, sir.

Q. Now, as a matter of fact, Coach Butts, after he had returned from a trip to New York with Coach Bryant and Coach Graves, told you and your coaching staff that [fol. 341] Bryant had told him that "We are going to throw what is known as the bomb, the home run against Georgia the first chance we get to."

A. Not to my knowledge he didn't tell me that.

Q. You don't know that he told that to John Gregory, your defensive coach?

A. No, sir; I do not.

Q. Would you say he didn't?

A. I wouldn't say; I don't know.

Q. The first time Alabama got the ball, what did it do? Threw the bomb, didn't they, the home run?

A. Not the first time; no, sir.

Q. All right, sir, what was their first play?

A. I don't recall the play. They kicked to us after a series of downs.

Q. All right, sir. Well, I meant—Georgia threw a pass which you say was intercepted?

A. Yes, sir.

Q. That pass was thrown by Rakestraw?

A. Yes, sir.

Q. It was from the—it was thrown—he was running out to his right to throw to the left end, Babb, wasn't he?

A. Yes, sir.

Q. And Babb was jostled or held up by LeRoy Jordan, the All-American center of Alabama, wasn't he?

A. I don't recall who held him up.

Q. He was held up?

A. That's right.

Q. And he didn't get where he was supposed to, not on his account, but he didn't get to where he was supposed to get, did he?

A. That's right.

Q. And Rakestraw threw the pass, and Alabama made a fine interception right down to the man's shoetops, didn't [fol. 342] he?

A. Yes, sir.

Q. First play they ran after they intercepted that pass was the home run, wasn't it?

A. That's correct.

Q. All right, sir. They ran it from the same formation you have got over there called the pro-set, didn't they?

A. That's right.

Q. Williamson was a split end, and he was a swinging end; he would play left end when he was split on the left and right end when he was split on the right, wouldn't he?

A. That's right.

Q. The fellow that was supposed to cover Williamson was not a defensive ball player, was he?

A. No, sir; he was not.

Q. He wasn't trained to play defense, was he?

A. No, sir.

Q. And Williamson had no trouble at all giving him a wrinkle and going on by and catching the ball for a touch-down, did he?

A. That's right.

Q. You know that boy that was playing that position who was supposed to cover Williamson on the home run was not a defensive ball player, didn't you?

A. Yes, sir.

Q. You were supposed to have someone else in there for him?

A. Well, the reason that he was in the ball game, we got Rakestraw out first because Rakestraw had a bad ankle.

Q. Yes, sir.

A. And we had to put in another substitute, and under the rules we could only put in two in at a time, and we [fol. 343] took a chance on leaving Porterfield to get Rakestraw and another boy out.

Q. Porterfield was the one that was playing the position that was supposed to guard—defend against Williamson?

A. Yes, sir.

Q. These notes say that Porterfield is the best since Trippi; do you agree with that?

A. Well, that is a matter of opinion.

Q. Have you ever seen Charlie Trippi play?

A. Yes, sir.

Q. You know about him, don't you?

A. Yes, sir.

Q. One of the all-time greats of the University, isn't he?

A. Yes, sir.

Q. Porterfield cannot play defense, can he?

A. We haven't trained him to play defense.

Q. Charlie Trippi played defense, didn't he?

A. Yes, sir.

Q. Very good one, wasn't he?

A. Yes, sir.

Q. Charlie Trippi threw passes—

A. Yes, sir.

Q. —did he not?

A. Yes, sir.

Q. Did he kick it?

A. Yes, sir.

Q. Entirely different sort of ballplayer than Porterfield, isn't he?

A. Yes, sir; I would say so.

Q. All right, sir. That is the first touchdown. That re-

sulted from the home run with the offensive man in there on Georgia's defensive team. Now, the second score was a safety, wasn't it?

[fol. 344] A. Yes, sir.

Q. Would you please describe how that safety came about?

A. As I recall, it was a bad snap over the kicker's head and went in the end zone.

Q. That is just one of those things that will happen, isn't it?

A. Yes, sir; they happen.

Q. Just hard luck; the center threw it over the man's head that was supposed to be kicking it, right?

A. Yes, sir.

Q. And the ball went back into the end zone, and all he could do was fall on it for two points for Alabama; right?

A. Yes, sir.

Q. All right, sir. Now, tell me how the—how Alabama scored its second touchdown?

A. I am not sure I recall.

Q. This formation referred to or that you have already described about dropping the end off, containing with the tackle—

A. Yes, sir.

Q. —that is a normal defense employed by every college that you know about in the Southeastern Conference, isn't it?

A. Depends on the defense.

Q. That is what I mean.

A. Yes, sir.

Q. When you are against a pro-set passing situation, you drop your defensive ends off, don't you?

A. Normally.

Q. Normally?

A. Under passing conditions.

Q. All right, sir. Now, isn't it true—let me put it this way. You had a new man playing left end for Georgia in

[fol. 345] the Alabama game, didn't you, named Barry Wilson?

A. Yes, sir.

Q. Never had played in any varsity game before?

A. No, sir.

Q. Your team captain, his name was Ray Clark, wasn't it?

A. That's correct; yes, sir.

Q. And Ray Clark ordinarily would have been playing that position, wouldn't he?

A. Yes, sir.

Q. Ray Clark was injured two nights before the Alabama game in a scrimmage, wasn't he?

A. That's correct; yes, sir.

Q. Why were you scrimmaging your boys two nights before a big game like Alabama?

A. I felt like we weren't getting the concentration in a scrimmage that we planned with no contact, and we were not getting response from the players, and we scrimmaged them for about ten minutes.

Q. You felt just forty-eight hours before the game was to be played that you were not getting the concentration from your players that you thought you were entitled to?

A. Wasn't getting the concentration I felt it was going to take to play a good ball game and beat Alabama.

Q. And what other reason did you give for scrimmaging them just forty-eight hours before the game?

A. Wasn't no other reason.

Q. All right, sir. They weren't too happy about that, were they?

A. Well, I couldn't answer that; I don't know.

Q. What is your thought about it?

A. Well, I don't know; I don't imagine they wanted to [fol. 346] scrimmage. That is something normal in football.

Q. It is abnormal in football to scrimmage any team just forty-eight hours before the game, isn't it?

A. Well, that would depend on the situation.

Q. Well, is it normal at Georgia to scrimmage Georgia's team just forty-eight hours before a game?

A. It is the only time I have ever done it.

Q. Yes, sir. And it was in that scrimmage that you lost the captain of your team?

The Court: What is the nature of this, Mr. Schroder? I mean, I want you to have an opportunity; I can't see where going into what individual players did in the scrimmage, what relevance it has. If it is relevant, I am going to let you put it in.

Mr. Schroder: I will go into detail and explain to Your Honor what I am doing.

The Court: All right, sir.

Mr. Schroder: The impact of this witness' deposition, I mean, this witness' testimony, at least the way it occurred to me, I may be too close to the case, I don't know, was that certain information was transmitted which assisted the coach of the opposing team in his preparations for the coming game.

The Court: Yes, sir.

[fol. 347] Mr. Schroder: I can show not only that that didn't happen and couldn't have happened based on what we have got here already, but, as a matter of fact, the Georgia team itself wasn't ready to play that game. They lost the score, yes, 30 to 0, but it could not be attributed to what the Post says it was; could not be. Now, I am going into reasons to show why it was 35 to 0, or any other score.

The Court: All right, sir. If you have got the solution, go ahead.

Mr. Schroder: I have got the solution.

The Court: All right, sir.

By Mr. Schroder:

Q. I have talked about the first touchdown. I have talked about the safety. Now, the second touchdown, your left end, as I said, was a new man, sir?

A. Correct.

Q. And he committed an error, didn't he?

A. That's correct.

Q. He committed quite an error; he did not cover the area where he was supposed to cover?

A. That's right.

Q. And the man he was supposed to cover caught the ball for a touchdown, didn't he?

A. I believe that's correct, yes, sir.

Q. Yes, sir. Now, that is nine, that is fifteen points. The third touchdown happened in just the same way to the same unfortunate end who was out of position again [fol. 348] and didn't cover his man, didn't it?

A. Yes, sir.

Q. Same thing, wasn't it?

A. Yes, sir.

Q. Therefore, we now have the score about three touchdowns and two safetys; we have got 21 to 0, all of which occurred as a result of an individual unfortunately not doing what he was coached to do; right?

A. Well, there are things that lead up to that situation where they scored. There were other things that led up to it, too.

Mr. Cody: Speak up a little louder; I can't quite hear you.

The Witness: There are situations that put Alabama in position to score in the ball game, and those drives that the Alabama team made and the mistakes the Georgia team made.

By Mr. Schroder:

Q. None of those touchdowns were within the ten-yard line, were they?

A. That's correct.

Q. They were from out in the middle of the field?

A. Well, I believe that the first one was around the thirty-five or forty-yard line.

Q. Yes, sir.

A. Yes, sir.

Q. Do you know how the next two touchdowns were scored?

A. I don't recall; no, sir.

Q. But you do know that Georgia—your Georgia players—I hate to have to say this, being a Georgia man, but [fol. 349] Georgia did not play a good football game that night, did they?

A. I didn't think we played well; no, sir.

Q. The Georgia players made quite a few serious errors on their part in not doing what you had coached them to do?

A. Due to lack of experience; yes, sir.

Q. Well, I am certainly not being critical; I am stating a fact. That is a fact, isn't it?

A. Yes, sir.

Q. You have referred, in response to a question to you put by Mr. Cody about Rissmiller, and as you said, he was already voted by the sports writers of some organization as being, in their opinion, would be the sophomore-of-the-year, tackle?

A. Yes, sir.

Q. It was known, everybody knew he was potentially a great tackle at Georgia?

A. Yes, sir.

Q. Wasn't anything new about that, was there?

A. No, sir; I would say not.

Q. As a matter of fact, Coach Bryant himself had tried to recruit Rissmiller to come to Alabama, hadn't he?

A. I think that's correct.

Q. You know that is so, don't you?

A. I am not positive; no; I didn't recruit him myself.

Q. Where is he from?

A. He is from Eastern Pennsylvania.

Q. How many colleges to your knowledge were after him?

A: I couldn't say; probably five or six.

Q. You know there were more than that now, Coach Griffith?

[fol. 350] A. I really don't; I didn't recruit the boy individually.

Q. You didn't have a report from your recruiter that did go up there and get him?

A. Yes, sir; but we recruit some sixty boys. I can't remember that far back how many schools were after him.

Q. Georgia felt they had a real scoop when they got Rissmiller?

A. We still think so.

Q. And Bryant wanted him to come to Alabama, didn't he?

A. Probably did.

Q. Be that as it may, in your opinion, is Rissmiller the best tackle in the history of the University of Georgia to come to Georgia?

A. Well, he's got two more years left, and, as I say, I think potentially he is a real great football player.

Q. Well, what is your answer to my question? Is he the best tackle that—in the history of Georgia football?

A. I couldn't answer that.

Q. It is a matter of opinion, isn't it?

A. It is a matter of opinion. From what I know back through the years of Georgia football, he would be maybe not the greatest, and I would have to say probably he was not the greatest now, but he has two more years.

Q. As a matter of fact, he had a little bit of difficulty himself in the Alabama game, didn't he?

A. He was knocked out in the Alabama game; yes, sir.

Q. He made how many tackles?

A. I couldn't tell you.

Q. Have you talked to Coach Pearce about it?

[fol. 351] A. Not to the number of tackles Rissmiller made. We know, but I don't have those records with me.

Q. He played a fine game; I will say that for him; he played up to his capabilities. The next note here—pardon me—that was a note I was reading from, "Rissmiller great-

est in history." Next one said, "Rakestraw to right." I believe you said that means nothing to you?

A. No, sir.

Q. The next one is "Optional left pass" and you corrected your testimony now to say that was used in Georgia's plans in 1961?

A. That's correct.

Q. Nothing new about that, is it?

A. In 1961; yes, sir.

Q. Nothing new about that?

A. No, sir.

Q. "If can block man on corner, keeps running"; is that connected up in anything that you know of that Georgia has got?

A. Well, I—I would say it is a piece of information that could mean several things in football in general.

Q. Is that anything peculiar to the University of Georgia's football game?

A. No, sir.

Q. Is there any secret there in that?

A. I would say not.

Q. Next entry is a—

The Court: Mr. Schroder, before you go into that next entry, we have been sitting for an hour and a half. I am going to let the jury refresh themselves. You may step down, Coach Griffith.

[fol. 352] (Whereupon the witness was excused from the stand.)

The Court: Members of the jury, I am going to permit you to refresh yourselves from now until 3:30, at which time you will return to the jury box, but I must admonish you as previously not to discuss the case among yourselves or permit anyone to discuss it in your presence. Simply dismiss it from your mind until you return to the jury box at 3:30.

Let the jury pass out; everyone else remain seated.

(Whereupon the jury retired from the courtroom at 3:15 p.m.)

The Court: Court is recessed until 3:30.

(Whereupon Court recessed at 3:15 p.m., reconvening at 3:30 p.m.)

After Recess

The Court: All right, Mr. Schroder; you may proceed.

JOHNNY GRIFFITH having resumed the stand, testified further as follows:

Cross examination (continued).

By Mr. Schroder:

Q. Coach, the next entry in what has been described as [fol. 353] Burnett's notes reads, "Well disciplined ball club"; that would be on the second page, I believe, sir.

A. Yes, sir.

Q. What does a "well disciplined ball club" mean to you?

A. Well, it is a matter of opinion. It's been my opinion it means the team that is consistent in the operation and techniques of offense and defense, fundamentally strong; don't break down offensively or defensively as individuals. They are physically tough, strong, and basically that is my opinion of it.

Q. Doesn't that also—what you are saying, doesn't that add up to this, that a football player, or in this instance, the football club will be trained and trained and trained again in the particular techniques that the individual members of the club are supposed to carry out, that when the situation occurs in a game they will react instinctively?

A. That's correct; yes, sir; I would say so.

Q. Well, now, was the Georgia football team in the Alabama game of 1962, would it come within that definition?

A. In due respect to the football team, I would say no, because of the number of young people that we had to play in the game and after a certain amount of time there is a certain element of self-discipline that an individual develops through four years of college football.

Q. Yes, sir. On the next page you have already discussed the first note there, so I will pass on to the second one which reads, "Don't overshift". Georgia's basic fundamental defense could be described as "the loose six"?

A. Yes, sir.

[fol. 354] Q. Does Georgia or did Georgia in the game against Alabama in 1962 overshift?

A. Yes, sir.

Q. Did the Alabama team in the game against Georgia in 1962 overshift its defense?

A. Yes, sir.

Q. The next entry reads, and I believe you have discussed this, but I am going to ask you a couple of questions about it, reads, quote, "Woodward commits fast, safety man", unquote. Woodward is one of the best, if not the best, tackler in the secondary Georgia defense?

A. Yes, sir; I would say so.

Q. You have seen the film of the Georgia-Alabama game?

A. Yes, sir.

Q. You testified on direct-examination that it would be helpful for a defensive coach or a coach preparing his defenses against Georgia to know that Georgia had an individual who committed himself fast?

A. Yes, sir.

Q. Woodward was not a sophomore, was he?

A. No, sir; he was not.

Q. Woodward had played an entire season as safety man for Georgia in 1961, hadn't he?

A. Yes, sir.

Q. Georgia was scouted by Alabama in 1961, weren't they?

A. Yes, sir.

Q. Alabama had films of the Georgia games in 1961, didn't they?

A. Yes, sir.

Q. Well, it would be no news to anybody coaching Alabama that Woodward committed himself fast, would it?

A. No, sir.

Q. Now, as a matter of fact, having seen the film, don't you know that Alabama never did throw a pass in the season that was to be protected by Woodward?

A. Yes, sir.

Q. You know they didn't do that?

A. They did not.

Q. The next entry has to do with Don Blackburn?

A. Yes, sir.

Q. And Don Blackburn, unfortunately, was sick, wasn't he?

A. Yes, sir.

Q. And he only played about, what, four or five minutes in the Alabama game?

A. I would say approximately five minutes.

Q. Five minutes?

A. Yes, sir.

Q. The top entry on the page—on Page 4 reads, "Baer", and I am assuming we are changing that to read "Babb" for the purpose of our discussion—

A. Yes, sir.

Q. —"slot right, split right end out"; is that the way—doesn't "slot right" mean all those words?

A. As I say, I am not sure what it means actually.

Q. Wouldn't mean anything to you if you were getting ready to play Georgia, would it?

A. Well, no, sir; I would say not.

Q. All right, sir. Your next one, "Long count, left half in motion"; that is, what, a description of a half of a play?

A. It is the action of the left halfback. It doesn't mention a play.

[fol. 356] Q. Not a play; it is just an action of the left halfback?

A. That's right.

Q. That is nothing new, is it?

A. Long motion is not.

Q. "Long count, left half in motion," there is nothing new in that, is there?

A. No, sir.

Q. That's been used by Georgia for years, hasn't it?

A. Yes, sir.

Q. In fact, that is commonly used throughout the Conference, isn't it?

A. Yes, sir.

Q. Now, we have discussed the next one about "Best since Trippi". On top of Page 5, there is the entry again where we will use or substitute the name, "Babb on a hook on goal line." Now, is there anything new about that?

A. No, sir; we usually hook Babb on the goal line. We normally had two or three goal line passes. We would be—that would be one of them.

Q. That is one of the few things that an end can do that is left for him to do on the goal line is hook, isn't it?

A. That is one of the things he can do; yes, sir.

Q. Well, is there anything new about throwing an end on a hook on the goal line?

A. In football; no, sir.

Q. That is what we are talking about, football?

A. Yes, sir.

Q. We have discussed the next one. The third one on Page 5, reads, "Right halfback on fly, left halfback, quarterback gives to left half, left guard pulling blocks on corner"; now, "right halfback on fly" means one thing and that is [fol. 357] simply this, isn't it, that when you have a slot formation to the right with the end out from the tackle about three or four or five yards with a halfback, the right halfback is right here behind him, isn't he?

A. Yes, sir.

Q. And when he goes on what they call the fly, he reverses and heads back toward the quarterback before the ball is snapped, doesn't he?

A. That's correct.

Q. Now, is there anything else in that note that would mean anything at all to you?

A. You mean in all the notes or that one note?

Q. That one note I just read, that third entry on Page 5?

A. No, sir.

Q. That is no play that Georgia has, is it?

A. We put the right halfback on fly; yes, sir.

Q. But that doesn't tell anybody anything, does it?

A. No; it tells the action of one individual.

Q. That is done by everybody, isn't it?

A. Well, I have seen it; it is done in football.

Q. In college football everybody puts the slot man on a fly some times, don't they?

A. Yes, sir.

Q. Nothing new about that?

A. No, sir.

Q. Does the rest of the entry mean anything to you? Is it descriptive of anything the University of Georgia does?

A. No, sir; I couldn't tie that in with anything.

Q. The top of Page 6, I believe this one has been discussed. It reads, "Slot or wide slot till goal line"; now, isn't it true that every football team that you know anything about usually does pull in the offensive location of [fol. 358] the players, lining up of the players when they get to the goal line?

A. Yes, sir.

Q. Nothing new about that entry, is there?

A. No, sir.

Q. That is used by every team in the Conference, isn't it?

A. Yes, sir.

Q. The next one you discussed somewhat at length on direct examination, as I want to ask you a few questions about it. The entry reads, "Can't quick kick", well, now,

as I understood your testimony, Saye can quick kick, can't he?

A. Yes, sir.

Q. So that is not a true statement, is it?

A. Well, in the sense of the word, we can't quick kick from the normal quick kick formation.

Q. Is that what the note says?

A. No, I was explaining what a quick kick means to me.

Q. What does the note say?

A. "Can't quick kick."

Q. Georgia can't quick kick?

A. Yes, sir.

Q. And Georgia does quick kick, doesn't it?

A. Yes, sir.

Q. And so to that extent the entry is inaccurate, isn't it?

A. Yes, sir; I would say it was.

Q. All right, sir. The next one, "Slot right, right half on fly, screen to him;" so, again, I am the end, the tackle is there, and the halfback is right behind me in the slot; he goes on the fly back towards the quarterback before the center hands the ball to the quarterback. "Screen to him," [fol. 359] now where would he be if the quarterback was going to screen to him with relation to the field?

A. You are speaking of the right halfback?

Q. Yes, sir, screening to the man on the fly?

A. He would be beyond the left halfback three or four yards.

Q. And isn't it true that when this halfback moves on the fly, as we have described, the defensive team adjusts itself to that direction to protect against him doing something in that direction; is that right?

A. Well, not particularly on a fly. A long motion causes an adjustment in the secondary more than the fly.

Q. Well, why wouldn't you screen to the right half on the fly? You say you don't have that play, but this says you do have it. I want to ask why you don't have it?

A. Well, we don't think it is a good play. It is something we just don't do.

Q. So, certainly that is not an accurate picture of what Georgia does?

A. No, sir; it is not.

Q. All-right, sir. The next note you have also discussed at some length. Anyway, "29-0 series, Babb catches everything they throw"; now, 29-0 series, that is not even a pass series, is it?

A. No, sir.

Q. I believe you described that on direct-examination as being what is known in football jargon as the outside belly play?

A. Our 029 is; not 29-0.

Q. You don't have a 29-0, do you?

A. No, sir.

Q. You have no idea what 29-0 means, do you?

A. No, sir; I am not familiar with it.

[fol. 360] The Court: You do have an 029?

The Witness: Yes, sir.

By Mr. Schroder:

Q. And the 029 is the outside belly play?

A. Yes, sir.

Q. Where the quarterback can either kick or pitch to the man running out towards the sideline, the man in motion?

A. Yes, sir; that's correct.

Q. But there is no pass off of that?

A. No, sir.

Q. No way Babb could catch anything in that play; is there?

A. Not in this ball game here; no, sir.

Q. I believe we have already discussed the final page there and the entries on that. The basic formations used by the University of Georgia when it is on defense really are the same as those used by Alabama, aren't they?

A. In that ball game; yes, sir.

Q. In the ball game in 1962 they were using the same formations?

A. Basically the same thing.

Q. In 1961 after you became head coach, didn't you hire someone from Coach Bryant's coaching staff?

A. Yes, sir; I did.

Q. And he came over to coach the University of Georgia along with you?

A. Yes sir.

Q. For the 1961 season?

[fol. 361] A. Yes, sir.

Q. And his name was Bob Ford?

A. Yes, sir.

Q. And Bob Ford brought with him, when he came there to join your staff, all of the formations that Alabama was using?

A. Basically the defensive formations.

Q. Yes, sir. And you took those defense formations and put them into Georgia's formations, didn't you?

A. We took part of it, correlated it with ours; yes, sir.

Q. And he—when I say “he”, Coach Bryant is recognized as the outstanding defense coach in the country, isn't he?

A. Yes, sir.

Q. And one of the reasons you employed Coach Ford to come over and join your staff was to bring some of the information and help he had gotten under Coach Bryant when he was coaching at Alabama?

A. I thought he was a well-trained football coach and had a knowledge of defensive football.

Q. Which he had obtained from Coach Bryant at Alabama?

A. That's right.

Q. That is right, isn't it?

A. That's right.

Q. During the 1962 season you, as head coach, assign to one of your assistants the responsibility of preparing your team for offense, don't you?

A. Yes, sir.

Q. And your offense head coach, the coach in charge of your offense under you—

A. Yes, sir.

[fol. 362] Q. —in 1962 was Charlie Trippi?

A. Right.

Q. And Charlie Trippi has been a coach there at the University since he retired from professional football?

A. Yes, sir.

Q. And he left the professional ranks in what, about 19—

A. I don't recall; I think he came to the University as a coach in 1957; I am not sure.

Q. He had been there, anyway, five years through 1962?

A. Yes, sir.

Q. Now, you also have an assistant coach to whom you assign the over-all responsibility of preparing the Georgia team for defense or on defense, don't you?

A. Yes, sir.

Q. And what was the name of the assistant coach that had that responsibility during 1962?

A. John Gregory.

Q. John Gregory?

A. Yes, sir.

Q. During the game in Birmingham, 1962, Coach Charlie Trippi was up in the press box, wasn't he?

A. Yes, sir.

Q. And what was his function? What were his duties up in the press box?

A. To observe the Alabama defenses and make suggested plans as to what we could do to compete against them.

Q. He was up there to assist, be an offensive coach, to assist Georgia in its offense against Alabama?

A. Yes, sir.

Q. And he had a telephone that he would communicate [fol. 363] with someone down there on Georgia's bench?

A. Yes, sir.

Q. And he would tell that someone on Georgia's bench what play he thought Georgia ought to use?

A. That's correct.

Q. On the next series—on the next play?

A. Yes, sir.

Q. And you would send in a substitute to tell whoever was playing quarterback on that occasion—I think it was Rakestraw—to tell quarterback Rakestraw what play Coach Trippi wanted him to run?

A. Yes, sir.

Q. And that is the way most of the plays were run that evening, were't they?

A. About eighty per cent of them; yes, sir.

Q. Eighty per cent were called by Charlie Trippi up in the press box?

A. Yes, sir.

Q. All right, sir. Now, on defense, of course, when Georgia is on defense it has to adjust whenever its particular defense pattern is at the time according to, number one, what down it is, with Alabama having the ball; with the location on the field, that is to say, on what yard line or what area of the field; number three, what the—whether it is; as I said, the down and yardage, that is whether it would be first and ten, or second and eight; all of that goes into the person's mind who is setting the Georgia defense at any particular time; is that right?

A. Yes, sir.

Q. Now, who was—during the Alabama game of 1962, was Coach John Gregory on the sideline as the head defensive coach?

A. Yes, sir.

Q. Was Coach Gregory signalling to the Georgia team [fol. 364] on the field what defense to go into on any particular occasion?

A. Most of the time; yes, sir.

Q. Eighty per cent of the time?

A. I couldn't answer that.

Q. But you do know that the defenses that Georgia was in at any particular time, most of the time was called by your head defensive coach from the sideline?

A. Correct.

Q. Sir?

A. Correct.

Q. Going back to formations for just a moment before I go into the Post story or the Post article. Any variety of plays can be run from any given formation, can it?

A. Yes, sir; you can run a series of plays from possibly three to four different formations; yes, sir.

Q. All right, sir. Let's take the two formations on the board there, the slot formation at the top. From that formation how many different varieties of plays can a team use that is employing that formation?

A. Well, I can call them out the way we run them.

Q. Can you see that?

Mr. Cody: Speak a little louder so we can hear you.

A. (By the witness) Running to the slot formation you can run the sweep; you can run—would you like for me to draw them? I can call the name of the play. I don't know whether it will mean anything to you.

Q. I will bring this over there for you. Coach, it won't be necessary for you to draw it with crayon; you can use your finger.

A. Run this one here, and here with this man, go in the [fol. 365] trap here, come back with a pop on this side over here, and run a slant, pull back in here, and put this man in motion, and come back with a sweep, the same as you would run in this direction here, and you run a nineteen roll-out in this direction here, and run a—run a trap play back with him, and so on.

Q. And you can also run pass patterns off of that formation, can't you?

A. Yes, sir.

Q. Now, can the same thing be said for the pro-set?

A. Well, you limit yourself in this direction here in this hole right here; other than that you have got the same setback to this direction, you see.

Q. My point simply is this; you can run a—any number of—any number of running plays off of either formation, can't you?

A. Yes, sir; that's correct.

Q. And you can run any number of passing formations off of any formation?

A. Yes, sir; that's correct.

Q. Coach Griffith, have you read the article appearing in the March 23rd issue of the Saturday Evening Post bearing the caption "The Story of a College Football Fix"?

A. Yes, sir; I have read it.

Q. I now have before you here, Coach Griffith, the first column of that article on Page 81, Column 1. Where I am pointing my hand reads as follows: "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off." I want to ask you a couple of questions about that entry, please, sir. That would be [fol. 366] right vital information for a coach planning his defense to have, wouldn't it?

A. Yes, sir.

Q. Did you tell the Saturday Evening Post that that was true insofar as Larry Rakestraw is concerned?

Q. Have you ever told anyone that that is true insofar as Larry Rakestraw is concerned?

A. No, sir.

Q. Well, is it true insofar as Larry Rakestraw is concerned?

A. Not to my knowledge.

Q. Thank you, sir. Will you step down here just a moment. Put a—put sort of a parenthesis and then initial it.

A. Right here?

Q. Yes, sir. Draw a line right there. Thank you. I am now going to show you, Coach, the same page, Column 2. There is an entry on Page 2, in referring to Wallace Butts, reading: "Butts, filed away in the position of Georgia's athletic director, which he had held along with his coaching job for some years, was outspokenly bitter about his removal from the field." Did you tell that to the Saturday Evening Post?

A. No, sir.

Q. Do you know where they ~~get~~ that information?

A. No, sir; I do not, sir.

Q. Would you mark that, please, sir?

A. All right.

Q. Thank you, sir. Let's have Column 3, same page. The paragraph I am now referring to and pointing is on Page 81, and this is the last column. "The game itself would have been enjoyed most by a man who gets kicks from attending executions." It comes on down here, [fol. 367] "The Georgia players, their moves analyzed and forecast like those of rats in a maze, took a frightful physical beating." And, of course, you were there as head coach, weren't you?

A. Yes, sir.

Q. Did you ever say anything like that to the Saturday Evening Post?

A. No, sir.

Q. Do you know where they could have gotten that information?

A. No, sir; I do not.

Q. Will you please repeat with this, those places?

A. All right.

Q. Will you please just—well, do it right here, save you some running up and down. On this same page, being 81, in the third column where I am pointing now, it reads, and I quote, "It was a bitter defeat for Georgia's promising young team. The twenty-eight-year-old Johnny Griffith, who was beginning his second season as head coach, was stunned." Did you ever say that to anybody connected with the Saturday Evening Post?

A. No, sir.

Q. Do you know where they got that information?

A. No, sir.

Q. Would you do that, please, sir?

The Court: That is not attributed to Coach Griffith as having said that.

Mr. Schroder: He said he was stunned, it was a bitter defeat for him.

[fol. 368] The Court: He didn't say he wasn't stunned. You asked him did he tell the Saturday Evening Post that.

Mr. Schroder: The Saturday Evening Post attributes—

The Court: They didn't attribute that, from reading the article they didn't attribute that to Coach Griffith.

Mr. Schroder: I don't believe, with all due respect, Your Honor, I don't know whether anybody could know whether he was or wasn't, and whether he told the Post if he was.

The Court: He testified he didn't tell the Post that, but he didn't—

By Mr. Schroder:

Q. Did you tell anyone that?

A. No, sir.

Q. Let's have Page 82, Column 2. This is a quote directly attributed to the coach. Coach, at the bottom of the column there you are quoted as saying this, and I will read: "We knew somebody had given our plays to Alabama," Griffith told him." Did you say that?

A. No, sir.

Q. Do you know where the Post got that information?

A. Possibly so. I said this, that I figured somebody—

[fol. 369] The Court: Let him come back to the stand where we can hear his testimony.

Mr. Cody: Speak so we can hear you, will you, Coach Griffith?

The Court: Talk out a little louder.

The Witness: I made the statement I figured somebody had been giving information to Alabama, period.

By Mr. Schroder:

Q. Did you say what they have you quoted there as saying, giving your plays to Alabama?

A. I did not say "plays"; no, sir.

Q. Did you say right after that, "We knew somebody had given our plays to Alabama," Griffith told him, 'and maybe to a couple of other teams we played too. But we had no idea that it was Wally Butts.' Did you say that?

A. No, sir; I did not.

Q. Here at the bottom, Coach Griffith, it says, "Griffith went to University officials, told them what he knew and said that he would resign if Butts was permitted to remain on his job." Did you say that?

A. No, sir; I did not.

Q. Will you mark that one and initial it?

A. Yes, sir.

Q. Thank you, sir. Let me turn to Page 83, column 2.

[fol. 370] The Court: Mr. Schroder, before you take that down, did Coach Griffith mark there something he hasn't testified about or am I mistaken?

Mr. Schroder: No, sir; he went down too low the first time, and he—

The Witness: I put an arrow in there.

The Court: I thought it was something about calling the plays before the signals. That is where he marked it. He marked it incorrectly?

Mr. Schroder: No, sir; he marked it right; you have got it correct, now, have you not, Coach?

The Witness: Let me see; I think I have.

The Court: What I wanted clear was that about the players coming—that has never been gone over.

Mr. Schroder: Well, while he is down here, may I ask him about that?

The Court: Yes, sir; I thought that this would be the time to clarify it.

[fol. 371] Mr. Schroder: Yes, sir; I overlooked it.

By Mr. Schroder:

Q. "‘You Know’"—and I am reading or quoting from the article. "‘You know, during the first half of the Alabama game my players keep coming to the sideline and saying, ‘Coach, we been sold out.’" Is that an accurate statement?

A. No, sir.

Q. "‘Their linebackers are hollering out our plays while we’re still calling the signals.’"

A. Some of them came out of the game and said, "They knew what we were going to do," or something along those lines. I don't recall it word-for-word, and I don't know who said it.

Q. Just one player?

A. I am not sure; just one or two.

Q. Just one or two?

A. Yes, sir.

Q. But they didn't say it like they have got it there that you said?

A. No, sir.

Q. And to that extent it is an inaccurate statement?

A. That's correct.

Q. Did anyone ever come off the field and say anything to you about, "Coach, we have been sold out"?

A. Not to my knowledge.

Q. Well, you would remember it, wouldn't you?

A. I don't know whether I would, but I don't remember it.

Q. Well, you don't know where the Post got that information?

A. No, sir; I do not.

[fol. 372] Q. Thank you, sir. In block letters at the top of this, this being page 83, column 2, I think that is going to refer to what is down here at the bottom; if not, you correct me. I am reading here at the bottom, "I never had a chance, did I?" Coach Johnny Griffith said bitterly to a friend the other day. 'I never had a chance.'" Now, is that a correct quotation?

A. No, sir.

Q. Did you ever say that to anybody?

A. No, sir.

Q. The Post put it in large block letters on its own sheet "I never had a chance". That is what you say you never told anyone?

A. No, sir.

Q. You have not said that to anyone?

A. No, sir.

Q. The way that reads—only have half of it up there, but the article itself will show, "Head Coach Johnny Griffith of Georgia's beaten Bulldogs: 'I never had a chance.'"; your testimony is that is absolutely inaccurate?

A. That's correct; it is not a quote by me.

Q. All right, sir. After the—would you mark that one? I hate to give you all this exercise. Coach Griffith, after the Post issue of March 23rd hit the streets, did anybody come by to see you from the Post?

A. Yes, sir.

Q. Let me back up for just a moment and ask you this. Before the Saturday Evening Post published this article that we are talking about; did it ever consult with you as to the accuracy of the quotations that they were putting in that article as having been said by you?

A. No, sir.

[fol. 373] Q. Now, you said you were visited by a representative of the Saturday Evening Post after the issue hit the streets?

A. Yes, sir.

Q. Did you point out to the man who visited you from the Post that you had not been quoted accurately in that article?

A. Not the man that delivered the magazine to me; no, sir; because I did not read the magazine while he was there.

Q. Well, you have had some discussion with somebody from the Post since?

A. Perhaps a week or two weeks later.

Q. That is what I am referring to. What did you tell him about the manner in which they had used your name and your quotations in their article?

A. I simply told him—point out the misquotes that were directed to me.

Q. And what did you say about him having—should consult you before they quoted you in that way?

A. I said that I felt that I should have been contacted.

Q. And you went further than that, didn't you? Didn't

you write a letter or send a copy of a letter to the editor of the Post pointing out that you had been misquoted?

A. I wrote the letter to Dr. Aderhold and a copy was sent to the editor of the Saturday Evening Post.

Q. Has the Saturday Evening Post done anything about retracting the quotations which it has put in its article as being attributable to you?

A. Not directly to me.

Q. Have you seen any—not directly to you?

A. They have not contacted me directly; no, sir.

Q. I see.

[fol. 374] Mr. Schroder: May I ask the Court approximately what time—

The Court: 4:30.

By Mr. Schroder:

Q. The sophomore group that you have there at the University of Georgia, and I say "the sophomore group," I mean the group in 1962, they will be juniors this fall?

A. Yes, sir.

Q. They have quite a bit of potential, don't they?

A. I think so; yes, sir.

Q. And they showed that by beating Auburn, which has a right strong team, right?

A. Yes, sir.

Q. Won from Clemson also?

A. Yes, sir.

Q. With many of those sophomores coming back this fall we can certainly hope for a still better fall this season, can't we?

A. Yes, sir; I think so.

Mr. Schroder: Thank you.

Redirect examination.

By Mr. Cody:

Q. Coach Griffith, I have just a few more questions.

Mr. Schroder: Cody, you going to use this?

[fol. 375] Mr. Cody: No.

By Mr. Cody:

Q. And the first one being a little bit personal, you can decline to answer it if you wish, and I won't insist upon it. Was it true that Coach Butts was outspokenly bitter against Georgia's coaching staff?

Mr. Schroder: If the Court please, I think that would certainly be hearsay.

The Court: Well, I believe that you asked—

Mr. Cody: He went into it.

Mr. Schroder: That was in the article, and he denied he said that.

The Court: I think it is admissible.

Mr. Schroder: All right.

The Court: You asked him had he ever heard him say anything about him, and he asked him—I think it is admissible; I overrule the objection.

Mr. Schroder: All right, sir.

[fol. 376] By Mr. Cody:

Q. You want to make any comment about that?

A. I don't have any comment to make about it, because I don't know anything about it.

Q. Was it true that Georgia took a frightful beating in this Alabama game?

A. Not a physical beating; no, sir.

Q. So far as the score was concerned, they took a frightful beating?

A. Yes, sir.

Q. Was it true that that more or less shocked you, stunned you?

A. Yes, sir; to a certain extent.

Q. Was it true that in the 1962 season that you did think that somebody had given the Georgia plays or formations to other teams?

A. Yes, sir.

Q. Is it true—

Mr. Schroder: If the Court please, I haven't objected for two days as to leading questions, but I think he is leading the witness.

The Court: Don't lead your witness.

Mr. Cody: It is in rebuttal to something he asked about, Your Honor, and I—

The Court: You are still not privileged to lead him.

[fol. 377] By Mr. Cody:

Q. Coach Griffith, tell us just a little bit more about these boys coming off the field during the game, and by that I mean, you point out what part of the game or who those players were, if you remember, whether offensive or defensive players, and tell us a little bit more about that, if you can remember.

A. As I remember, one or two came out with a statement along these lines, that "they know what we are running; they are even calling out our plays. What are we going to do?" or something along those lines. I don't recall a great deal about it, because in the heat of a ball game you are not concentrating on something like that, but I do remember something of that nature.

Q. You are busy trying to make substitutions and look at the plays yourself, aren't you?

A. That's correct; yes, sir.

The Court: You are leading him, Mr. Cody.

Mr. Cody: I will quit that.

The Court: It's awfully easy to do that.

Mr. Cody: I know.

By Mr. Cody:

Q. Now, there's a lot been said here about the fact that a lot of other teams use this pro-set and use this slot formation that you describe; are there variances from that [fol. 378] formation by different teams?

A. Are there what?

Q. Variances.

A. In—yes, sir; in, for example, the slot formation there is; some teams will use a six-yard slot; some a ten; some a five; and some a two.

Q. Of what importance is that?

A. Well, as I said before—

Mr. Schroder: Cody, I believe we have been all over this.

By Mr. Cody:

Q. Have you answered that before?

A. Yes, sir; along those lines in regard to the defensive and play as to where he will line up.

Q. There is a time when you use a particular play; is that of importance?

A. In a game plan you have game situations, first and ten, second and long, second and short, second and third, and the offensive plan or your running attack and your passing attack are broken down to those categories; yes, sir.

Q. Now, to reduce football really to its most common denominator, what you try to do when you get the ball—see if this is correct—you have four downs to make ten yards; is that right?

A. Yes, sir.

Q. You—

Mr. Cody: You mind if I lead him to that extent?

The Court: No, sir; you can't lead him.

[fol. 379] By Mr. Cody:

Q. If you don't make the ten yards in four downs, what happens?

A. Well, you don't get to that fourth down as far as running the game goes. You kick the ball normally on the fourth down.

Q. And the opponent has the ball?

A. That's correct; yes, sir.

Q. Is that when the— is that when the opponent has a better opportunity to make a touchdown, when they have the ball?

A. Yes, sir.

Q. If they don't make a touchdown when they have the ball, it is when they intercept a pass or something of that sort, isn't it?

A. That's correct.

Q. Fumble, pick up a fumble? Now, what was your— what was your complaint or what was your opinion, Coach Griffith, as to the effect that it had on your team when it got the ball by your opponent having some information about your plays or formations? Now, tell us about that.

Mr. Schroder: Now, wait a minute, whoa. Let me see here.

Mr. Cody: I think that is—

The Court: Just a moment; just a moment.

Mr. Cody: I think that is a proper question:

[fol. 380] The Court: Well, I don't know.

Mr. Schroder: No, sir; he is putting words into the witness' mouth not only by leading him but also is putting words in the witness' mouth that the witness hasn't said.

By Mr. Cody:

Q. I will correct that by adding the words "if they had information about your plays and formations."

Mr. Schroder: If the Court please, I think that would call for a conclusion.

Mr. Cody: I think it is a hypothetical question based upon facts that have been testified to.

The Court: Well, I don't know. I don't think you prop-

erly worded your question, and as it is now I think it is objectionable. I will sustain the objection to it.

Mr. Cody: Very well then.

By Mr. Cody:

Q. Coach Griffith, have you ever expressed any opinion as to how much better team Alabama had than Georgia before the game?

A. Yes, sir; I am sure that I have. I could not give you a definite date or who I expressed it to, but it was general information before the ball game—I felt that Alabama had [fol. 381] better personnel than we had, and more experienced football team.

Q. How much better?

A. Well, in my opinion I felt that if the Georgia team scored once and Alabama scored three, that we would have done possibly the best we could have done with the material that we had at the University of Georgia.

Q. You got another game coming up in September, haven't you?

A. Yes, sir.

Q. You hope you do better?

A. We plan to do better; yes, sir.

The Court: Any further questions of Coach Griffith?

Mr. Cody: Just a moment, Your Honor.

By Mr. Cody:

Q. Coach Griffith, roughly do you know how many yards Georgia gained in its offensive plays against Alabama during that game?

A. No, sir. I don't know the exact number. I think it would probably be less than a hundred, in the 80's, 90's; I am not sure.

Q. Is that good or bad?

A. That is bad.

Q. You know how many passes they completed?

A. Georgia?

Q. Georgia.

A. Not the exact number; no, sir. I would say probably around eleven; I am not sure.

Q. Do you know how many they tried?

A. No, sir; I don't know the exact number; probably [fol. 382] eighteen or nineteen.

Q. Do you know how close you got to the goal line at any one time or the closest you got?

A. I believe that we got to their 40-yard line; that was the closest we got.

Q. And you said the score was 35 to nothing, I believe?

A. Yes, sir.

Mr. Cody: I believe that's all.

Recross examination.

By Mr. Schroder:

Q. Mr.—Coach Griffith, the last quarter of the game Alabama was using its third and four stringers, wasn't it?

A. I believe they were in the last.

Q. They were trying not to run up the score; they were using their third and fourth stringers, weren't they?

A. I think they were in the last quarter; yes, sir.

Q. How many passes—Mr. Cody asked you how many passes they completed. How many passes did Mickey Babb drop that night?

A. I don't recall.

Q. Quite a few, wasn't it?

A. I don't recall.

Q. Do you know of any he dropped?

A. Yes, sir. I know of one or two he dropped definitely.

Q. Without bringing the blown-up portion of the article back here, Mr. Cody was asking you about some remarks made by Georgia players, Georgia personnel coming off of [fol. 383] the field. I want to refer you, please, sir, to the Saturday Evening Post article which reads—and I am reading from Page 81, column 3—

Mr. Cody: Are you quoting him now?

Mr. Schroder: Quoting him? I am quoting—

Mr. Cody: If he is not quoting Coach Griffith, I object to it.

Mr. Schroder: I am quoting the Saturday Evening Post article.

The Court: All right, sir; go ahead.

By Mr. Schroder:

Q. Quoting, "The Alabama players taunted us," end Mickey Babb told him. 'You can't run eighty-eight pop, (a key Georgia play) on us,' they'd yell. They knew just what we were going to run, and just what we called it.' What is that play "eighty-eight pop"?

A. We don't have an "eighty-eight pop". We have the "thirty-three" and "thirty-two pop".

Q. You mean you don't have an "eighty-eight pop" in Georgia's offensive plans?

A. No, sir.

Q. Well, then, there couldn't be a key Georgia play such as that as the Post refers to it?

A. We don't have the "eighty-eight pop."

Q. That is what I say; it couldn't be a key Georgia play [fol. 384] as the Post calls it?

A. That's correct.

Q. No play for Georgia, is it?

A. No, sir.

JOHN GRIFFITH having resumed the stand, testified further as follows:

Recross examination (continued).

By Mr. Schroder:

Q. One question, Coach Griffith. You know Bob Edwards?

A. Yes, sir.

Q. Bob Edwards first called you about this matter saying that Burnett had furnished it to him; is that right?

A. Yes, sir.

Q. Now, the first time that Bob Edwards called you was before Christmas in 1962?

A. As I recall; yes, sir.

The Clerk: Plaintiff's Exhibit No. 28 for identification is a copy of a letter dated October 22, 1962, to Coach Johnny Griffith from Wally Butts.

(Whereupon above document was marked for identification only as Plaintiff's Exhibit No. 28.)

[fol. 385] The Clerk: Plaintiff's Exhibit No. 29 for identification is a copy of a letter dated February 26, 1963 to Coach Johnny Griffith from Wally Butts.

(Whereupon above document was marked for identification only as Plaintiff's Exhibit No. 29.)

By Mr. Schroder:

Q. Mr. Griffith, I hand you Plaintiff's Exhibits 28 and 29, and ask you did you receive the originals of those letters?

A. Yes, sir.

Mr. Schroder: That's all, Your Honor.

The Court: Any further questions?

Mr. Cody: I'd like to ask him a couple of questions, Your Honor.

The Court: All right, sir.

Redirect examination.

By Mr. Cody:

Q. Coach Griffith, this information, after examining the notes made by Mr. Burnett, in your opinion could that information affect the result of this Georgia-Alabama game? [fol. 386] A. Yes, sir.

Q. If you had been the Alabama coach and had received that type of information—

Mr. Schroder: If the Court please, we are going into all this all over again. I am going to have to go through all this.

The Court: Let's see what the question is.

Mr. Cody: I haven't asked him this before.

By Mr. Cody:

Q. Would it have been helpful to you in the preparation of your defense against Georgia had you been the Alabama coach?

A. Yes, sir.

Mr. Cody: That's all.

Mr. Schroder: All right, sir.

Recross examination.

By Mr. Schroder:

Q. Coach Griffith, referring back to the so-called Burnett notes which we reviewed in court here yesterday—

A. Yes, sir.

Q. —I believe you testified that a good number of those notes were inaccurate and didn't even apply to anything [fol. 387] that the University of Georgia had; is that correct?

A. Yes, sir.

Q. The only two things that you saw in those notes that, in your opinion, as you testified, might have affected or might be of any benefit to an opposing coach—

A. Yes, sir.

Q. —were the two formations we spent some time discussing yesterday?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. Those two formations were the two formations that were also used by Alabama in its offense, weren't they?

A. Yes, sir.

Q. In the Vanderbilt game, which was the following game played by the University of Georgia in Nashville, Georgia used those same two formations, didn't it?

A. I am not positive; I think so.

Q. You think so?

A. Yes, sir.

Q. How did that game come out?

A. Georgia won 10 to nothing.

Q. Using the same formations that Vanderbilt had seen the week before when they were scouting Georgia in its game against Alabama?

A. I couldn't answer that positively; no, sir; I couldn't answer that.

Q. Well, do you remember varying your offense against Vanderbilt?

A. Well, I am sure that we did, because they used a different defense.

[fol. 388] Q. I mean, your formations?

A. I can't recall; no, sir.

Q. Those are really your two basic formations, aren't they?

A. Well, we used other formations during the season. Yes, sir.

Q. Yes, sir. Those are your two basic formations that you did use throughout the season, weren't they?

A. Yes, sir.

Q. Throughout the season '62?

A. Yes, sir.

Q. And as you said yesterday, you had been using those same two formations in 1961 also?

A. Yes, sir.

Mr. Schroder: Excuse me. That's all.

Examination.

By the Court:

Q. Coach Griffith, if I recall correctly you said you felt that two other games—information had been given on two other games; is that correct?

A. No, sir; I did not say that.

Q. I misunderstood you.

A. Yes, sir.

FRANK INMAN called as a witness on behalf of the Defendant, after having first been duly sworn, testified as follows:

[fol. 389] Direct examination.

By Mr. Cody:

Q. Your name is Coach Frank Inman?

A. Yes, sir.

Q. Where did you attend college, Coach?

A. Presbyterian College.

Q. Where is that?

A. Clinton, South Carolina.

Q. Did you play football there?

A. Yes, sir.

Q. What coaching experience have you had?

A. I got my Master's Degree at Duke in 1947; and in the spring—end of the year I went to Richmond Academy in Augusta as Assistant Coach, and stayed at the Richmond Academy until last year when I went to Georgia. In 1956 I became Head Coach.

Q. What part of the team do you coach now?

A. At the University?

Q. Yes.

A. I am the offensive backfield coach.

Q. What year was it you went to the University as a coach?

A. Last year; my first year was last year, the season of 1962.

Q. Were you an assistant coach then during the—at the time that Georgia played Alabama?

A. Yes, sir.

Q. Coach Inman, have you seen these notes that Mr. Burnett turned over to the Athletic Department, have you ever seen those notes?

A. No, sir; I have seen a copy of them.

Mr. Cody: Let me see those notes.

[fol. 390] By Mr. Cody:

Q. Hold these notes a minute. I want to ask you a few questions about them. Did you attend all the staff meetings of coaches during the spring training of 1962?

A. No, sir; I did not. I was not employed until July 1, '62.

Q. Then did your work begin on or about September 1st in the coaching of the players of 1962?

A. My first practice session was September the 1st.

Q. Will you state to the Court whether or not you helped train the team with respect to a formation that you coaches refer to as a slot formation?

A. Yes, sir.

Q. Did you train—help train the team with respect to a formation known as the pro-set?

A. Yes, sir.

Q. What is that pro-set, Coach Inman?

A. Pro-set is a set at Georgia where we use a slot on one side with an end and halfback and on the opposite side the off end is split; with the Alabama game, about fifteen yards.

Q. How many basic formations are there in football, just approximately?

A. That would be difficult to answer. There are a large number. I could name a few and you can count them.

Q. Suppose you name a few.

A. Well, there is the pro-set we use, which I suppose other people do too. We use the wing, the wing back without any end split; sometimes we use a wing back with an off end split which we call a flex. It is also a normal T-back, full house backfield. There are many variations of spread [fol. 391] formation such as the one that Tech used this past year against us.

Q. Was that a pro-set?

A. We called it a spread.

Q. I see. Go ahead.

A. And then you can take any one of those sets that I have mentioned and just by changing the spacing of the line men or the position that the back lines up, whether he is in a close position, three yards, or in the middle position, three to five yards, or out eight or more yards, and I think that would change the formation completely.

Q. When you refer to a slot formation, are there different variations in there, so far as the distance in the spread is concerned?

A. There is a lot of—a large amount of discussion, I think, about the width of a slot, and at Georgia we have used different ones since I have been there. We started with a three-yards, and at other times we had it wider than that.

Q. Is the difference in that width of the slot important in football?

A. Yes, sir.

Q. Would it be important to an opposing team to know the width of that slot?

Mr. Schroder: If the Court please, he is leading the witness.

Mr. Cody: I think he has a right to express an opinion about it, Your Honor.

The Court: He said you were leading the witness.

[fol. 392] Mr. Cody: Yes, sir.

The Court: And I agree with him.

By Mr. Cody:

Q. What is your opinion, Coach Inman, as to whether or not the width of a slot is important?

A. I think it is important to determine where the defensive people are going to be placed, whether or not they would put more than one defensive man in the position in the area between the slot, whether or not they would declare the strength of the defense like a monster man or rover line-backer toward that direction. We think it makes a lot of difference in how you set your defense. Of course, there are a lot of things involved, the field position, and so on. But generally the formation is a basic thing that you determine your defense from, one of the basic things.

Q. Look on those notes, Coach Inman, and turn to Page 5. Do you see anything on that page that indicates a Georgia formation?

A. Is this the one that says "Slot or Wide Slot"? Am I looking at the right page?

Q. On Page 5. Your pages are not numbered, but in the order in the order in which they appear, I think—

Mr. Schroder: Mr. Cody, I think you are referring to the second note on Page 5.

By Mr. Cody:

Q. The second note on Page 5.

[fol. 393] A. "Slot to right, ends normal (three yards)"?

Q. Yes.

A. That is the question, please?

Q. Is that a formation, a Georgia formation?

A. In our slot right formation we did set the end three yards, and put the on side halfback in that area, a yard behind the yard of scrimmage.

Q. Turn to the last page, Coach Inman. The first item on that page you see where it says "Slot right, left end out fifteen yards"?

A. Yes, sir.

Q. Was that a Georgia formation?

A. That is what we call our pro-set, which is the slot right with a split end on the off side, and we tried to put him out wide, fifteen yards.

Q. Did you help train the Georgia team to use that formation for the 1962 season?

A. Yes, sir. I was the assistant offensive backfield coach, and I worked primarily with the halfbacks. I helped Charlie, and I worked particularly, I would say, in this formation where the backs lined up.

Q. How many formations—back up there just a minute. The Alabama game for the season of 1962 was the first game of the season; is that right?

A. Yes, sir.

Q. Did you have a good many sophomores on your team?

A. Yes, sir.

Q. How many formations did you help train that team to use in the Alabama game?

A. We had two basic formations, but, of course, we worked them both ways, and I guess you would call that four formations; we had a slot right and slot left and a pro right and a pro left.

[fol. 394] Q. Did you use those formations during the game?

A. Yes, sir.

The Court: Did you use any other formations except those two formations during the game, those basic formations?

The Witness: During the Alabama game?

The Court: Yes, sir.

The Witness: No, sir. To my recollection we used that. Of course, we used a punt formation. As I recall we ran one time from a punt formation, which I don't think—but that is the formation, so we ran those two.

By Mr. Cody:

Q. Coach Inman, do you have any opinion as to whether or not this information could have been helpful to Alabama? Do you have an opinion about it?

A. These notes?

Q. Well, I mean—yes, the notes?

A. I think that any information in football from a reliable source would be valuable to any coach, and the value of it, I think, would—I assume would be, at least in my case, would be determined by whom—where it came from. If an expert told me—

Mr. Schreder: Wait a minute; whoa, whoa.

[fol. 395] The Court: Just a minute. That is hearsay. You can go back and ask him the question, what some expert told him would be hearsay.

Mr. Cody: Let's don't get into some comment an expert told you.

By Mr. Cody:

Q. I am asking you as an expert whether or not, in your opinion, this information contained on those notes or any information on those notes could have been helpful to Alabama?

A. Yes, sir; I think it could.

Q. If you had been the Alabama coach would it have helped you prepare your defense against Georgia?

A. Well, I would have to say what I said before. You say if I had been?

Q. Yes.

A. Any information I got in football would have—I'd have to decide on how valuable it was, depending on where I got it from. If one of my coaches gave me this information, I would take it without any question, and that is what I meant by—when I said "expert". I should have said "coach", a qualified coach. Does that answer your question?

Q. I think it does. Coach Inman, do you know—do you know who the head of the Southeastern Conference is or was in 1962?

A. The Commissioner?

Q. Yes.

A. Yes, sir; I know him.

Q. Who is he?

A. Mr. Gardner.

[fol. 396] Q. Who is Mr. Gardner?

A. He is head of the officials' association.

Q. If you wanted to obtain an interpretation of a rule, who would you—who would you turn to?

A. Other than my coaching staff?

Q. Yes.

A. If the staff couldn't decide, I assume I would go to the man in charge of it who would be, in this case, Mr. Gardner.

Q. Did Coach Butts have anything to do with the football team during the 1962 season so far as coaching was concerned?

A. Not to my knowledge, no, sir.

Cross examination.

By Mr. Schroder:

Q. The note you read a moment ago in Page 5 reads: "Slot right—" you read it. I forget what page it's on.

A. The last page?

The Court: I think he is referring to the second note on the 5th Page.

By Mr. Schroder:

Q. Page 5, the second note.

A. "Slot to right ends normal (three yards)."

Q. As that note is written, it is incorrect, isn't it?

A. I am not sure I understand you.

Q. Do you put your ends out three yards on the slot right?

A. The right end is split three yards on slot right.

Q. This doesn't say that. It says both ends.

[fol. 297] A. It says "ends normal".

Q. "Ends normal (three yards)"; isn't that what it says?

A. In parentheses it says "three yards"; yes, sir.

Q. Do you put both ends out three yards?

A. On the side of the slot the end is three yards, as near as we can get it, which is, as I understand—

Q. You have two ends on your team, don't you?

A. The off end, if I could finish, the off end in our set-up would be anywhere from three feet to whatever it takes him to run the play.

Q. What is an off end?

A. The one away from the slot.

Q. All right, sir.

A. It would be the left end in a slot right.

Q. Then to the extent that this says your ends are three yards out or split, that is erroneous, isn't it?

A. Not to my thinking; no, sir.

Q. You used—you do split both ends three yards out on a slot right?

A. On slot right the right end splits three yards. The left end splits to do the job, whatever the call is.

Q. Does he go three yards out?

A. He could go three yards; yes, sir.

Q. Is that a slot right formation there on top?

The Court: I don't believe he can hardly see it.

A. (By the witness) Yes, sir; that is a slot right.

Q. I want you to show me this. The witness was not here yesterday, and I might state for his information this was drawn by Coach Griffith as Georgia's right slot formation.

A. Yes, sir.

Q. Now, your note there reads, "slot to right, ends normal [fol. 398] mal (three yards)"; now, in order for that note to be put on this board, you would have to move this end out here to the same distance that would be, wouldn't you?

A. I suppose if you are going to say this (three yards) means both ends, you are right.

Q. How many ends does it say? Does it say singular or plural? Read it.

A. It says "ends".

Q. E-n-d-s?

A. Yes, sir.

Q. How many ends does a team have?

A. Two.

Q. One here and one there, right?

A. Usually one on the right and one on the left.

Q. That's right, sir. That is here and there?

A. Yes, sir.

Q. And when that said "ends normal (three yards)", your slot right, it would be a different diagram than this one, wouldn't it?

A. I don't see any marking up there about the split of that end.

Q. I didn't draw this. This was drawn by someone else. Can you see it all right?

A. Yes, sir.

Q. Well, the note that you have there in your hand is different from this, isn't it?

A. I think the right end in a slot is three yards and a left end is split anywhere from three feet to any position it takes to get the job done, and if you are saying this note says that both ends are three yards, then I would say that the slot right at Georgia could be that way.

Q. I am not saying—

A. But it would not be that way every time.

[fol. 399] Q. I am saying what the note says.

A. I thought you asked me—

Q. The note speaks for itself, doesn't it? I mean, just read it.

A. Mr. Schroder, you asked me what the note said.

Q. Read it.

A. "Slot to right, ends normal (three yards)."

Q. "Ends normal (three yards)"; now, that is not my language. The language there says that your ends are split

three yards; in effect, isn't that what it says "ends normal. (three yards)"?

A. Yes, sir.

Q. All right, sir. Under that note this end would line up three yards away from the tackle just as that end is lined up three yards away from this tackle?

A. Under—if they were going to draw this, sir, I thought you said that was Georgia's slot?

Q. I am talking about—if you are going to draw that formation up, you would move this end out here, wouldn't you, three yards?

A. I suppose you would; yes, sir.

Q. All right, sir. No, oftentimes it is true, speaking of information and the reliability of information that comes into coaches' hands, it's been known often for one coach to plant information where another coach can get it, hoping he will rely on it; you know of instances like that, don't you?

A. No, sir; I don't.

Q. You weren't at Georgia in 1961 before the Vanderbilt game; you weren't at Georgia then?

A. No, sir.

Q. You never heard of that being done, a plant?

A. I have never done anything like that.

Q. I am just asking have you ever heard of anything like that?

[fol. 400] A. Have I ever heard of information being planted?

Q. Hoping that other coaches would rely on it?

A. I have heard of things like that. I don't know of any reliable coach that might use planted information.

A. We have what we call a spread; yes, sir.

Q. Did you use it last year?

A. No, sir—last year?

Q. Did you use it in the Vanderbilt game—I mean, the Alabama game?

A. No, sir.

Q. Is this similar to the one that Alabama uses and similar to the one Georgia Tech uses?

A. No, sir.

Q. Well, I don't know what the formation is, but you did not have any spread formation that you used against Alabama in '62?

A. No, sir.

Q. Is that correct?

A. Yes, sir.

Q. How—I have forgotten the score; what was the score of the Georgia Tech-University of Georgia game?

A. I would like to forget it; it is something in the 30's.

Q. Sir?

A. Was it 30?

Q. 30-something 6, wasn't it?

A. Yes, sir.

Q. And Georgia Tech and Alabama, you rate them even?

A. Georgia Tech won the game; yes, sir.

Q. Won the game how much?

A. I don't recall; they won the game.

Q. About two points?

[fol. 401] A. They used some kind of a spread formation and were able to win.

Q. Alabama used the same formation against Tech that Tech used against Alabama, didn't it?

A. I don't know, sir.

Q. Alabama beat Tech by two points, didn't it?

A. No, sir.

Q. Excuse me. I had it backwards. Georgia Tech defeated Alabama by two points, didn't it?

A. I am really not sure. I think that's correct. They won the game.

Q. And Georgia Tech and Alabama played Georgia about the same way, didn't they?

A. Different times of the year.

Q. Yes, sir. But about the same results?

A. I would say Alabama beat us a little worse on the scoreboard.

Q. That was the first game your sophomores had ever played in?

A. The Alabama game; yes, sir.

Q. Now, is there anything particular about these two plays as Coach Griffith drew yesterday, or wasn't Georgia using those same formations in 1961?

A. I can't—I really can't say exactly what Georgia used in '61.

Q. You did—you weren't at Georgia in '61, were you?

A. No, sir; I went there a little late, and so I didn't have an opportunity to study as much as I should have.

Q. All right.

A. But these formations we have used since I have been at Georgia, and I assume we have used some of those prior to that time.

[fol. 402] Q. Well, they are right basic formations for any Southeastern Conference Football Team, aren't they?

A. They are basic formations for any team that uses a slot with those splits and a pro-set with those splits.

Q. Do you know of any team in the Southeastern Conference that doesn't use either one of those two formations?

A. You just talked about the Tech game in which they had to go to what they figured was a surprise move and a spread that was not either one of those; no, sir.

Q. I say, do you know of any team in Southeastern Conference that does not use these two formations as part of their basic plan?

A. I don't know of any, but I couldn't say that they all do or do not, because I do not know that much about some teams. Like Tulane, for example, that I have not seen play.

Q. Well, it is a fairly common—both of them are fairly common basic fundamental formations, aren't they?

A. Along with a number of others; yes, sir.

Q. Yes, sir. Mr. Cody asked you about some rule interpretations, or who you would go to for an interpretation of the rules as they apply to football players and teams. In 1962—let me ask you this—I withdraw that for the moment. What organization establishes or promulgates rules to be followed by the teams all over the country, as well as those in the Southeastern Conference?

A. The Rules Committee. I don't know the exact name.

Q. I don't mean the members; the name of it.

A. I believe it is the American Football Coaches Association Rule Committee. I am not sure about that, about the name.

Q. They promulgate and seek enforcement of all rules as they pertain to the various colleges which belong to that association throughout the country, don't they?

A. You understand, I don't have a very large background in college football. My understanding, they make the rules, and Mr. Gardner and other groups have to enforce them.

Q. Enforce them?

A. That means they have to interpret them, I think.

Q. Don't you know, as a matter of fact, that that association has local representatives in each area like the Southeastern area and the Southwestern area and the Pacific Coast area, and Midwest?

A. Which? You talking about the rules committee?

Q. Yes, sir.

A. I understood that is right.

Q. Who, in 1962, was the southeastern representative of that rule-making body?

A. I understand Coach Butts.

Q. Coach Wally Butts?

A. Yes, sir.

Mr. Schroder: I believe that's all, Your Honor.

The Court: All right, sir; any further questions from Coach Inman?

Mr. Cody: Just a second, Your Honor.

[fol. 404] Mr. Schroder: I may have one or two more.

Mr. Cody: Well, I have—

The Court: He said he might have another question.

Mr. Schroder: There was one question I missed.

The Court: All right, sir, go ahead.

By Mr. Schroder:

Q. I forgot to ask; you said you were—during 1962 you were the assistant offensive backfield coach?

A. I believe that is the way they—what they call it. I worked with the backs. Coach Trippi was the offensive backfield coach and I was called, I think, the assistant backfield coach, and worked in recruiting.

Q. You were Coach Charlie Trippi's assistant?

A. No, sir; I was Coach Johnny Griffith's assistant.

Q. I thought you said Coach Charlie Trippi was in charge of the offense?

A. He was in charge of the offense.

Q. And you were under him?

A. Everybody that worked with the offense was under the offensive coach; yes, sir; but I think I was considered an assistant at the University of Georgia, not another member of the staff.

Q. I understand that.

A. Yes, sir.

[fol. 405] Q. But Charlie Trippi was in charge of the offense, wasn't he?

A. Yes, sir.

Q. And you were—you were assisting him?

A. Yes, sir.

Mr. Schröder: That's all.

Redirect examination.

By Mr. Cody:

Q. Coach Inman, during the early part of your 1962 season, did you have secret practice?

A. You mean prior to the '62 season?

Q. Yes.

A. Yes, sir; at Georgia we have a fence around our practice field, and, as I recall, a manager was stationed at the gate and allowed only authorized personnel on the practice field.

Q. Is that a—is that a walled field? Do you have a wall around it?

A. Yes, sir.

Q. Was Coach Butts permitted to attend those secret practices?

A. Yes, sir; Coach Butts was our athletic director.

Q. Did—why is it, Coach Inman, that you—that you don't prepare or train your team for the first game of the season to use all of the basic formations?

A. Well, that is a decision, I think, that the staff has to make, and in our case I think the feeling was that we had a large number of inexperienced players and that by concentrating on these maneuvers and using these formations, using our best people in certain positions, that we could [fol. 406] move the football and do a better job. I assume that that is the reason everybody decides on certain formations.

Q. And you limited yourself to two?

A. Well, I would call it four, slot right, slot left, pro right and pro left.

Mr. Cody: That's all I have.

Recross examination.

By Mr. Schroder:

Q. I believe you said you ran from another formation, a punt formation you ran in the Alabama game?

A. Yes, sir.

The Court: Sometimes that is a necessity, isn't it?

Mr. Schroder: It wasn't this time.

The Witness: No, sir.

By Mr. Schroder:

Q. This was a planned play, wasn't it?

A. Called play.

Q. Called play. This Alabama end who caught the first touchdown pass—did you see the game?

A. Yes, sir.

Q. His name is Williamson?

A. I believe that's correct.

Q. Plays right end?

A. Yes, sir.

[fol. 407] Q. And he would play left end if they were going to swing him over that way?

A. Yes, sir.

Q. Did you hear Coach Buts tell the offensive coach or Charlie Trippi that—or John Gregory, when he came back from New York with Paul Bryant and with Ray Graves, coach at the University of Florida, to watch out for Williamson on the first opportunity that Alabama got, that they would throw the bomb, as they call it, to Williamson?

A. I don't recall being in on that conversation; no, sir.

Q. That is what they did too, wasn't it? They threw the homerun to him as soon as they got Georgia's interception, that was the first touchdown for Alabama, wasn't it?

A. Yes, sir.

Q. Don't you all—

A. It wasn't the first time they had the football, as I recall it.

Q. It was the first time they had the ball, I mean, when they intercepted Georgia's pass?

A. Yes, sir.

Q. And they were in position for the homerun, weren't they?

A. Were they in position for a homerun on 50, approximately? I would say anything that far out would be considered in football a homerun.

Q. And they did it?

A. Yes, sir; a fine executed play.

Q. Unfortunately, we at that time had an offensive man trained to play offense in the backfield, supposed to cover Williamson, didn't we?

A. Mr. Schroder, who do you mean "we"?

[fol. 408] Q. The University of Georgia.

A. Yes, sir; the University of Georgia.

The Court: Any further questions?

Mr. Schroder: Just one moment.

By Mr. Schroder:

Q. What is the name of the large—a student community—what is that, the Student Educational Center?

A. The Georgia Center for Continuing Education.

Q. Yes, sir. That is sort of in the shape of a hotel, isn't it?

A. Yes, sir.

Q. Has rooms upstairs?

A. Yes, sir.

Q. How close is that to your practice field?

A. It's—it's not exactly adjacent, but it is well within sight.

Q. No problem at all for someone up there to see if they wanted to see what Georgia was doing out there, was there?

A. I can't answer you positively. I have wondered about it, because it is a very pretty place and it is real tall.

Q. It is real tall, and Georgia practices out there behind. If they wanted to get in there and spy, there wouldn't be any problem, would there?

A. It's not behind it; it is this side of it.

Q. This side of it?

A. Yes, sir.

[fol. 409] Mr. Schroder: That's all.

Redirect examination.

By Mr. Cody:

Q. How far is that building away from the practice field?

A. Well, I have been having a tough time with three yards. I think—I would guess the hotel part of the building is two hundred yards, I suppose. This would be real—

Q. I just want your estimate of it.

A. I would think that's right.

Q. Two hundred yards?

A. There is a building there and some open space in the center, so, whatever that is.

LEROY PEARCE called as a witness on behalf of the Defendant, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Joiner:

Q. Would you state your name, please?

A. Leroy Pearce.

Q. What is your present employment?

A. I am assistant football coach at the University of Georgia.

Q. How long have you been employed in that capacity?

A. Since February 8, 1962.

[fol. 410] Q. Did you play college football?

A. Yes, sir.

Q. Where did you play college football?

A. University of Wyoming.

Q. Coach Pearce, I wonder if you would tell these gentlemen of the Jury the experience that you have had in the field of coaching football?

A. I coached football for Coach Badden in Wyoming in 1950-51 and 51-52. I coached for Arkansas in 1953 and 1954.

Mr. Cody: Speak a little louder, Coach Pearce, if you can.

A. I coached at Tennessee for Coach Wyatt in '55 and '56. I coached at Iowa State for Jim Myers in 1957. I coached for Bill Jennings in Nebraska from 1958 through 1961.

Q. What time of the year did you come to the University of Georgia?

A. February 8, 1962.

Q. And what was your position at that time?

A. I was to coach the offensive ends and the defensive ends.

Q. And would you state whether or not you occupied that same position during the 1962 football season?

A. Yes, sir.

Q. Coach Pearce, would you state your opinion as to whether or not football coaches, in the course of preparing for a game, seek to obtain information about their opponent?

A. Would you—do you mean scouting?

Q. Yes.

A. Yes, sir. Scouting is a common practice, and in most conferences now they have the film exchange where you can [fol. 411] exchange films with your opponents, and, of course, you have people on your staff that scout. Most of the assistant coaches scout, and that is going to the game and watching the game to pick up anything that you can do, and those are common practices in football.

Q. Would you go into a little bit more detail about what is involved in scouting, what information you are able to obtain and what your purpose in scouting a football game is?

A. Well, in your football scouting you try to get an analysis of the team's offensive and defensive tendencies, get the plays they run, the formations they are in, and get all their defenses and stunts. These are things you can get in a film, because you can study a film and run it backwards and forwards. At a game when you are scouting it is real hard to get a lot of things like that, because it is hard to keep up with the game because you are trying to keep tendencies on downs, distances, situations, and trying to get a feel of the game and study their personnel actually by being there and not from the film.

Q. Would you state whether or not it is normal for coaches in the Southeastern Conference to try to attend the spring practice game of teams that they expect to play the next year?

A. Yes, sir.

Q. Are they able to obtain any information that will give some indication of what the team could be expected to do during the next year?

A. I believe that the most valuable information you could get from that would be the—it is the first time you get a chance to see boys that will be sophomores play the next year. Now, you—usually the teams are regulated on their offense and their defense so that coaches that are [fol. 412] there, if they bring enough people, they get a chance to pick up your stunts and things on defense or your offensive things.

Q. When you play that spring practice game, you know there are going to be opposing coaches watching, do you not?

A. Yes, sir.

Q. Now, would you summarize to the Jury the shortcomings in the procedures that coaches use to obtain information; in other words, what information would you like to have that you are not able to obtain through normal procedures?

A. Well—

Q. Maybe you'd like to break it down to detail the scouting first and then the films, and I believe you have covered the spring practice.

A. I wish you would restate that question, please.

Q. What are the shortcomings of scouting as far as getting complete information about a team that you are about to play?

A. Well, if you have the films you can take the films and break them down. I would say the only shortcomings as far as films are concerned is it doesn't show all pass patterns unless somebody has a wideangle film, and usually—now, we don't take them at Georgia, and I don't know whether anybody would let you have their wideangle film, but you can get pass patterns if you have the wideangle film. If not, you can't get those and you would have to rely wholly on your scouting or your scout at the game to pick up pass patterns. I think that would be the main weakness of films, but from films you can get their offensive and defensive patterns, and if they don't change it you can be in real good shape on it.

[fol. 413] Q. Now, what opportunity have you had to scout the team that you are going to play on the opening day of the season?

A. Well, you have, during the summertime you can get all of their last year's films which we did, and I am sure that everybody does, and I'd say that the only shortcoming about this is if there is a lot of change in personnel, you don't get to see the new personnel.

Q. And would you state whether or not there were a lot of changes in personnel on the 1962 Georgia football team?

A. Yes, sir. We played a lot of sophomores in 1962.

Q. Would you summarize for the Jury the procedures that football teams in general, and Georgia in particular, utilize to prevent other teams from obtaining information?

A. Well, at the University of Georgia we have what we call closed practices, and we have a wall around our practice field to keep people from getting in, and anybody at the practice is supposed to be admitted—we have a manager on the door and he is supposed to only admit people that have been—well, members of the Board of Trustees and things like that, and in most cases the press and—state the rest of the question.

The Court: He said—

By Mr. Joiner:

Q. What is the—

[fol. 414] The Court: He said state the rest of the question; he didn't understand the question.

Mr. Joiner: I believe he covered it, Your Honor.

The Court: All right, sir.

By Mr. Joiner:

Q. In particular during the 1962 season, what precautionary measures did you exercise with reference to your play groups?

A. Well, in 1962 I—we broke our team into three groups, the backs and the ends and the lineman, and had our foot-

ball players in group meetings and gave them the offensive and defensive assignments in those meetings, and I would say that our quarterbacks probably had a real good picture—well, I hope they had a real good picture of the overall offensive part of the game, but other players just had what they were supposed to do.

Q. In other words, the left guard wouldn't know what the halfback was going to do on the play, and the right end wouldn't know what, maybe, the quarterback would do?

A. I don't think it would be that bad. He would know in the numbering system because we number our backs. But if he were a blocker, the halfback were a blocker, the guard might not know that.

Q. If someone should try to obtain a copy of these plays, would you state whether or not they would have to have the plays for each individual position before they would [fol. 415] have a complete analysis of each offensive play?

A. I believe that they'd have to have the linemen, ends and backs.

Q. Coach Pearce, who was favored to win the 1962 Georgia-Alabama game?

A. Alabama.

Q. How much was Alabama favored to win that game by?

A. Well, as nearly as I can remember it was 14 to 17 points.

Q. I believe you previously testified you were not at Georgia during the 1961 season; is that correct?

A. Yes, sir.

Q. Have you had an opportunity to review the films for the 1961 season?

A. I reviewed all the films when I came to Georgia, and I studied mostly the end personnel, because I knew I would be coaching the ends for the 1962 season.

Q. To the best of your recollection, how many different formations were used by Georgia during the 1961 season?

A. I can't give you an answer to that because I don't know. I mean, there are—

Q. Could you give us an estimate, an approximate number?

A. Well, I'd just say several, because I really don't know.

Q. Now, Coach Pearce, what formations were used by Georgia in the 1962 Georgia-Alabama game?

A. Well—

Q. Basic formations?

A. The names that we gave them is a slot and a pro-set, [fol. 416] and I am sure that you have been over that.

Q. And would it be correct to state that you could say that there are variations of those two separate formations, or you could say it is four different formations? I mean, assuming you go both ways?

A. Assuming that you go both ways, if you count right and left, it is two different formations; it could be four formations.

Q. Would you state your opinion as to whether it could also be considered two formations with those variations; in other words, could it have been—state your opinion—state your opinion as to whether or not it could have been considered the pro-set formation going left and right and the slot formations going left and right?

A. I believe the best answer I could give is that if you put a play in, say, slot right, and put a play in, that you have the same play going the opposite way with it turned over. Now, I really don't understand your question if that is not the answer.

Q. Well, my question is whether or not the two basic formations—let me rephrase it. State your opinion as to whether or not the two basic formations used by Georgia in the 1962 Alabama game were the pro-set and the slot?

A. Yes. Our basic formations were pro and slot.

Q. Assuming that both of these formations were used by the 1961 Georgia team, along with other formations, would it be of any help to an opposing coach to know that these were the two particular formations that you were going to use in that game if he knew the formations you had used the previous year?

[fol. 417] A. If he was sure that those were the formations he could cut his practice time, mainly on those formations, and later in the week practice the other formations, the best plays you could use from the other formations. Did you ask me a question and did I answer it?

Q. My question was, assuming that the opposing coach knew all of the formations that had been used during the previous season and that these two formations were used during the previous season, if he knew that these two particular formations were going to be used in the game and no others, would that be helpful?

A. Yes.

Q. Now, how many formations did Georgia generally use in a game during the '62 season?

A. We didn't use very many formations, because we—

Q. I mean, in one particular game, how many formations would you usually prepare to use in any one particular game?

A: Well, we picked out two or three formations for each game, depending on what we thought we could do best against the football team that we were going to play.

Q. Now, assuming that the opposing coach knew from the films of the 1961 season the plays that Georgia had used during that season and assuming that Georgia used the same plays in the 1962 season, would it be helpful to a coach to know the particular plays that a team intended to use in a particular game?

A. If you knew the exact plays it would be helpful, because you could practice against them and get recognition from them.

[fol. 418] The Court: You mean plays for formations?

Mr. Joiner: Plays. I believe I covered the formations previously, Your Honor.

By Mr. Joiner:

Q. Coach Pearce, during the course of preparation for a game, do you normally have the first team defense work against the first team offense?

A. Well, we, at the University of Georgia we have the first team defense work against the scout team, and we have the first team offense work against the different scout team so that they actually never work against each other.

Q. What would the scout team that was working along with the defensive team be running?

A. The scout team that worked with our defensive team would run the opponent's offensive plays.

Q. To the best of your knowledge at that time, from scouting the offensive team?

A. Yes, sir.

Q. Coach Pearce, if information were given that would relate to the formations and plays of a particular game, would it be any more help in the opening game than in games later in the season?

A. Well, as I previously stated, I think it would—it would help you early because you would—if you knew of anything new, if you knew anything about players that had not played the previous year.

Q. Would you state your opinion as to whether or not it would be more helpful in the opening game than it would later on in the season?

[fol. 419] A. It would be more helpful in the opening game because as a team starts to play during the year, from one week to the next, you can't make a major change in your football team. So, anything that you have in the first game you will stick with that basically for the next game. You can change for each game a little bit, but not a major change.

Q. Would you state your opinion as to whether or not in college football it is quite frequently done for a coach to change in some respects his offense from one year to another?

The Court: You mean from one year, one game—

By Mr. Joiner:

Q. One year?

A. I would say a lot of coaches change from one year

to the next, because mainly if you are losing, you are trying to find something that is better than what you are doing, and you will—for instance, we have spent a lot of money going to coaching clinics, talking to other coaches and trying to find out what we are doing, and in our staff meetings if we decide somebody else is doing something that is better than what we are doing, I am sure we will change to it.

Q. Would you state your opinion as to whether or not the opponent of Georgia for the opening game of 1962 could have told, from reviewing the 1961 films, whether or not Georgia was going to continue to use the same offenses that they used in 1961?

A. I would say that they could have taken all the films of last year and broke them down, and the things that we did best from 1961, assuming that we would have used [fol. 420] those, they would have no assurance what we would have used.

Q. Would they have—what, if any, assurance would they have had that you were not putting in one or two completely new formations?

A. None.

Mr. Schroder: What's all this got to do with the case? We are just talking about two formations.

Mr. Joiner: Well, Your Honor, Mr. Schroder has made the point—

The Court: I think it is relevant.

Mr. Schroder: I withdraw the objection.

The Court: I overrule the objection. I think it is relevant.

By Mr. Joiner:

Q. Coach Pearce, I show you these notes which have been admitted in evidence, and ask if you recognize them?

A. I have seen a photostatic copy of these notes right here.

Q. Will you state whether or not you have seen them on more than one occasion?

A. Yes, sir; I have.

Q. And are you fairly well familiar with the contents of these notes?

[fol. 421] A. Yes, sir.

Q. Directing your attention to Page 6 of the notes, the third entry on that page, it is next to the last page, "slot right, right half on fly, screen to him"; do you see that entry?

A. Yes, sir.

Q. Would you state whether or not that comes close to describing a play that Georgia used in the 1962 Alabama game?

Mr. Schroder: We are coming close—I think that ought to be explained, if it is coming close and how close.

Mr. Joiner: Your Honor, I would like an opportunity to explain it. Mr. Schroder—

The Court: Go ahead and explain it.

Mr. Joiner: Mr. Schroder has tried to restrict this to the technical language on the notes, but the witness Burnett has testified that he was unable to get down the exact language and that some of this is sketchy information, and if some of it comes close to describing a Georgia play, I think it is important to have that information because it could very well have been that writing as quickly as he did Burnett was unable to get the whole play written down, and I think it is a proper question.

[fol. 422] The Court: I will let him testify as an expert if he could determine from those notes what it meant.

Mr. Schroder: Yes, sir. But seems to me what counsel has stated, he is seeking to impeach these notes he is relying on. If they don't speak the truth, he is trying to get it explained.

The Court: I don't think so. I will let him ask it. I will hold him within bounds.

By the Witness:

A. I think the best way I can answer your question is to tell you how we did screen for this game. We would—

assuming we had a slot right, we'd put our right half in long fly, we called it, and our quarterback would go on a drop back pass, and we would screen to our left halfback who had gone across. We did not screen to the man that was on the fly; we screened to the other halfback.

Mr. Schroder: Well, now, if the Court please, it is not a question what Georgia would do or did do. The question is whether or not Georgia has this play, and I think that the question that was asked a moment ago and the answer would be objectionable. The note speaks for itself. The Post has charged us with—charged Butts with giving detailed information as to plays.

The Court: As an expert, Mr. Pearce, could you tell from [fol. 423] those notes what that play meant in relation to what you knew of the Georgia offense?

The Witness: Well, this is not our screen pass. It is close to our screen pass. We screen to the other halfback, screen to him, and I think you have to—I don't know whether you can assume who "screen to him" is; if that is the plan on the fly, we didn't screen to him.

By Mr. Joiner:

Q. What if it is the left halfback?

The Court: I will let him explain it. I think the Jury will understand it.

By Mr. Joiner:

Q. If "him" is a left halfback, would that be an adequate description of a screen pass which you intended to use in the 1962 Georgia-Alabama game?

A. If "him" is the left halfback, yes.

Q. Directing your attention to Page 1 of the notes, would you give the Jury your opinion of the tackle on the '62 team named Rissmiller?

A. I have been asked about Rissmiller before.

Q. Let me point this out. I am asking your opinion as of the week before the 1962 Georgia-Alabama game and

not as of the present time, because I don't think that would be pertinent.

A. Rissmiller was a starter for us, and he is the best we have, but if you say "greatest in history," as this is, and I really don't know what "greatest in history" means, but he did not start for us; he was the best we had.

[fol. 424] Q. Would you state your opinion as to whether or not it would be helpful to an opposing coach to know who your best lineman was?

Mr. Schroder: I don't think that is the way the note reads, Your Honor. The note reads "Reismueller greatest in history," and again he is putting something else in the notes that is not in the notes.

Mr. Joiner: I think that—

Mr. Schroder: It doesn't say he is the best lineman.

The Court: He is going into a question of adjectives. I will let him ask him. I don't know what your last question was.

Mr. Joiner: Let me restate that, Coach Pearce.

By Mr. Joiner:

Q. Would you state your opinion as to whether or not it would be helpful to an opposing coach to know who your best lineman was?

A. I would say that; I would say that it would be helpful. You might want to run at him. During the game he might not be as good as he was supposed to be.

Q. Now, turning to Page 2 of the notes, third entry on that page, what was your opinion as of the week before the 1962 Georgia-Alabama game as to the state of the discipline [fol. 425] of the Georgia team? I realize it is hard to remember back that far, but if you would, just to the best of your recollection,

A. As I have stated before—as I have stated before on this question, I think there is a real wide meaning in discipline of a football team, what some people think discipline is and what other people think it is. Now, I stated before

that as far as the ends were concerned, and I was concerned mainly with the ends, that before we played Alabama I thought our ends were well disciplined. In the Alabama game I thought they did some things they shouldn't have done, and I didn't think they were well disciplined during the football game.

Q. Had Georgia added two coaches just prior to the '62 season?

A. Yes, sir.

Q. And who were those coaches?

A. Coach Inman and myself.

Q. Directing your attention to the third page of the notes, the first entry on that page, "on side guard pulls on sweep," what does that mean to you, Coach Pearce?

A. Well, this note—excuse me, I am—what does this mean to the Georgia football team or what does this mean?

Q. What does it mean to you? I mean, what do we mean by saying this on side guard pulls—

A. Okay.

Q. I am trying to get across to the Jury what you mean by that, because they as well as I are not quite as familiar with football as you coaches are.

A. Well, assuming a—a sweep is a play that is designed to run inside of an end or outside of an end, depending on how he plays. If he goes out, you try to kick outside; if [fol. 426] he plays tight, you try to run around him. On a sweep, assuming you are running it to the right, if the on side guard pulls on a sweep, it would be the right guard pulling, and that—I think I explained a pull, when they step back and turn up the field in the hole open, the first place there is daylight to block any one of the opposing players that they come to first.

Q. Would you state your opinion as to whether or not it would be helpful to an opposing coach in preparing to defend against a sweep to know whether or not the on side guard might pull on the sweep?

A. It is an unusual thing. A lot of coaches would never pull an on side guard because of the danger of somebody

shooting through that area and stopping the play, and we would only do it against certain defenses. Now, have I answered your question?

Q. I am not sure that you have. My question is whether or not in preparing a defense against a sweep it would be helpful to a coach to know that the on side guard might pull, but let me withdraw that and rephrase it in another way. Would it be helpful for a linebacker to be coached to be on the alert for an on side guard to pull on a sweep so that he would be able to shoot the slot or be watching for an opportunity to do so?

A. It would be helpful if the linebacker keyed on the guard; yes.

Q. Would you explain to the Jury what you mean by this phrase "shooting the slot"?

A. In football, in shooting the gap, if—we have the gap rule and I am sure that everybody has a gap rule, and if on our gap rule, if a guard takes too big a split and our guard feels like he can make it through the gap and get in the opposing team's backfield without being blocked by that [fol. 427] guard, we tell him to go ahead and shoot the gap. Now, that is—that is up to each guard each time. Now, was your question in reference to linemen or linebackers?

Q. A linebacker.

A. Linebackers, if they key the linemen they are playing against hard, in some cases are given the option to run through when a guard pulls or works down the line of scrimmage in the direction that he is pulled, because the guard is usually pretty good key on the direction he is going, and by "key" I mean what he does the defensive man reacts to that action.

Q. In other words, what you are saying is when the guard pulls out, there is a hole left there that the linebacker can run through and make a tackle; isn't that in essence what you are talking about?

Mr. Schroder: That isn't what he said, if it please the Court.

The Court: Mr. Schroder—

Mr. Schroder: If he is going to quote him, he ought to quote him. The witness says the linebacker follows the direction in which the guard is going, as I understood.

The Court: Just a moment.

The Witness: The linebacker—

[fol. 428] The Court: Go ahead. I think Coach Pearce can explain it.

The Witness: The linebacker in many cases will have an option of either running through the direction that the guard pulls from or working down the line the direction he pulls from. By working down the line I mean staying on his side of the line, and by running through I mean running through into the other team's backfield in the direction that the guard pulls.

By Mr. Joiner:

Q. Would you state whether or not when you say "running through" you are referring to running through the hole that was left by the guard when he pulled out?

A. Yes, sir.

By Mr. Joiner:

Q. Coach Pearce, I believe we were on the top entry, note 3, with reference to the on side guard. Would you state whether or not during the course of the 1962 Georgia-Alabama game a play was run by Georgia in which the on side guard did pull on a sweep?

A. Yes, sir. We pulled our guards twice in the game.

Q. Would you state whether or not to the best of your recollection that would be reflected in the film?

A. Yes, sir; it would have been.

Q. Now, directing your attention to the middle of that page, "Woodward commits fast, safety men"; who was your first string safety man for the Georgia-Alabama [fol. 429] game of '62?

A. Brigham Woodward.

Q. And would you give your opinion as to whether or not he did commit himself fast in—I am talking now about previous to the Alabama game and in the Alabama game?

A. Woodward was a sophomore in 1961, and sophomores have a tendency to commit fast. Let me say, first of all, he is a real good tackler. He does like to tackle. Woodward, we felt that Woodward committed maybe a little bit fast, but we were working on it; we were trying to correct it.

Q. Would you state to the Jury what you mean by a safety man committing fast?

A. Well, a safety man is supposed to prevent touchdowns and supposed to be the last man in your defense, and if he goes up to make a tackle and the runner would happen to get by him, it might be a touchdown, or if they faked a run into the line and threw a pass in his territory it might result in a touchdown or a long gain.

Q. Would you state whether or not to the best of your recollection there were instances in the 1962 Georgia-Alabama game in which Woodward did commit fast?

A. He made several tackles on the line of scrimmage; yes.

Q. And would you state whether or not to the best of your recollection that would be reflected by the films of the game?

A. Yes, sir.

Q. Now, directing your attention to the next entry on that page, "weak defense, anybody except Blackburn"; how long did Blackburn play in the game?

[fol. 430] A. I can't answer that as to time. He didn't play very much.

Q. Would you state the reason for that?

A. Well, Blackburn, in practice before the Alabama game, was—kept getting pains in his stomach and did not practice very much, and so he just hadn't practiced enough to play very much.

Q. Would you state to the best of your recollection the date on which the coaching staff decided that Blackburn would not be used extensively in the game?

A. I can't answer that question at all, I don't believe, because I don't remember it.

Q. You don't remember the date on that?

A. No, sir.

Q. Assuming that this entry is with reference to pass defense, state your opinion as to whether or not this information would be helpful to Georgia's opponent in the opening game if Blackburn did not play very much during the game?

A. I'd say if Blackburn didn't play much during the game you could throw to anybody, to answer your question.

Q. Would you explain what you mean by that, what this entry means to you, and why you say you could throw to anybody?

A. Well, if—excuse me. If I answer your question, it says if Blackburn is not in the game and you say, "weak on pass defense, anybody except Blackburn," and Blackburn is not in the game, I would assume that would mean, and this is an assumption only, that everybody else is weak.

Q. And if it did mean that, would it be helpful to an opposing coach to know that in order to prepare his pass offense for the game?

[fol. 431] A. Well, if you thought the other team was real weak on pass defense you would plan to pass a lot.

Q. Now, directing your attention to the entry on the middle of Page 4, "long count, left half in motion"; would you state whether or not that has any significance with reference to any play which Georgia intended to use in the 1962 Georgia-Alabama game?

A. We used a long fly or long motion which put our half-back away from the formation before the ball was snapped. We practiced on it and we did use it on the Alabama game.

Q. Would that be reflected in the film?

A. Yes, sir.

Q. Now, directing your attention to the entry on the top of Page 5, "Bear on hook to goal line"; assuming that that is made with reference to end Mickey Babb, would you state whether or not to the best of your recollection you

had any such play in mind to use in the Alabama game, if the opportunity was present?

A. I have looked for our game plan and I haven't been able to find it on that, and we—Mickey Babb is six-four, and a real good target. I can't tell you "yes, that was definitely in our game plan"; I just can't answer that.

Q. Assuming that it was in your game plan, did you have an opportunity to use a play of this nature in the 1962 Georgia-Alabama game?

A. No, sir; we were never close to the goal line.

Q. Now, that next entry "slot to right, ends normal three yards"; assuming that to be a brief statement of slot to right, end is normally three yards, what would that mean?

[fol. 432] A. Well, to me that would mean that if—if we are in a slot right, that our end would be split three yards, and that—if that meant that that was our slot—let me say that last part over. Our slot was a three-yard slot, and I—I don't know whether this means our formation or what it means right here.

Q. Would you state whether or not it comes close to describing one of the formations that was used by Georgia in this game?

A. That is exactly—if it is slot right, ends normal three yards, that is exactly our slot right formation; yes.

Q. No, Coach Pearce, does it make any difference in preparing to defend against a slot formation whether or not the end is split two, three, four, five or six yards?

A. Yes, sir; it makes a tremendous difference to the people playing in the wide positions, which are the ends, and the people that I coach for the Georgia team. We thought it was real important to have a three-yard slot. In fact, we stopped our practice several times and measured off, just walked three yards. When you say three yards, until you get out there and pace it off to the boys they don't really understand what a three-yard slot is, and if I—if I knew that a team was—would be in a three-yard slot, I could—I think could do a better job preparing my defensive ends for that slot formation.

Q. Would you state whether or not to the best of your recollection you had any difficulty in getting the ends to line up prior to the 1962 Georgia-Alabama game exactly in a three-yard split?

A. Yes; I stated that. Our offensive ends?

Q. Yes.

[fol. 433] A. Yes. I have already stated that. We had a hard time. Like I said, several instances in practice we stopped practice and we would walk off three yards from the outside foot of the tackle to the inside foot of the end so they could have another look at what three yards really was.

Q. Now, directing your attention to Page 6 of the notes, the second entry on that page, "can't quick kick"; would you state your opinion as to whether or not Georgia did have an authentic quick kick for the Alabama game?

A. Would you tell me what you mean by an authentic quick kick?

Q. Yes. Perhaps it would be better if you just describe the quick kick that they did have and tell the Jury how that differs from a quick kick that might be used in the normal formation.

A. We had a quick kick formation, and we quick kicked from that formation, and in that formation we had our line regular, we had wingbacks, two backs at each end, a fullback, and our kicker or—and in our case it was Jake Saye who was our kicker, and a quarterback lined up deep. He could quick kick from that formation, and he could—could throw a pass or we could run the ball, and when we—we call it a quick kick formation, and then we call it quick kick if we quick kicked.

Q. Would you state your opinion as to whether or not lining up in that formation would tip off the other team to the possibility of a quick kick or a kick of some type?

A. Well, Georgia and Tech are the only two teams I know that quick kick from that formation. There may be more; I just know of those two.

[fol. 434] Q. State your opinion as to whether or not the surprise element of quick kick is greater from a normal formation that it is from this formation that you have just related to the Jury?

A. I would say any time that you could come out in a regular formation and quick kick that it would be more of a surprise element; yes.

Q. Now, would you state whether or not Georgia was able, in the beginning of the 1962 season, to quick kick from the normal formation?

A. No, sir; we could not.

Q. Now, directing your attention to the last entry on that page, "Baer catches everything they throw"; assuming that to mean end Mickey Babb, would you state your opinion as to whether or not Mickey Babb was the best receiver on the team, and you understand now that I have reference to the period of time immediately prior to the Alabama game?

A. Mickey Babb is an excellent target, and I am sure that Rakestraw wanted to throw to him more than any other end.

Q. Would you state your opinion as to whether or not he was the primary target in the Georgia-Alabama game?

A. We threw to Babb more in that game than anybody else; yes.

Q. Now, directing your attention to Page 7, the entry which appears on the top of that page, "slot right, left ends out fifteen yards"; what does that mean to you, Coach Pearce?

A. Well, that means that you are in a slot on the right and your left end is split fifteen yards, and this is your pro formation.

Q. Now, Coach Pearce, would you state your opinion as [fol. 435] to whether most of this information contained in these notes relates to the offense to be used by Georgia or to the defense to be used by Georgia in the game?

A. I wish you—

Q. Let me withdraw that and rephrase it. Would you state your opinion as to whether or not most of the information on these notes relates to offense or defense? Maybe you'd like to briefly go over them.

A. No; no, I kind of understand what you are talking about; I understand what you are talking about. These notes, as far as I am concerned, concern the offense of the team that is being talked about.

Q. Now—

A. Mostly; I will add that.

Q. Coach Pearce, to the best of your recollection, how many yards did Georgia gain in the 1962 Georgia-Alabama game running?

A. I couldn't even come close to answering that. We didn't make very many.

Q. Could you give us a close approximation as to the total yards?

The Court: He said he couldn't come close to it.

Mr. Joiner: I was asking about passing and running.

The Witness: No, sir.

By Mr. Joiner:

Q. Would you state whether or not Alabama had the ball—well, let me withdraw that and rephrase it. Would [fol. 436] you state your opinion as to whether or not Alabama was on offense in the 1962 Georgia-Alabama game more than the Georgia team was on offense?

A. We were on offense forty-six plays. I don't know how many plays they were on offense. There is usually about eighty plays, eighty-five. Seemed like—during the game seemed like they were on offense all the time, but that is not right. We were on offense forty-six times. I do not know how many times they were on offense.

Q. Coach Pearce, have you had an opportunity to review the films of the Georgia-Alabama—the Alabama Georgia Tech game for the 1962 season?

A. We studied the films before we played Georgia Tech, and I have seen them once since the season, but—and that's all.

Q. Who won that game?

A. Georgia Tech.

Q. Would you state to the jury to the best of your recollection how the game was won, what you remember of the closing minutes of the game?

Mr. Schroder: We have got into another game.

The Court: What's that got to do with this?

Mr. Joiner: Your Honor, I am not sure it's got any relevancy, but Mr. Schroder went into this game on the examination of Coach Inman on one or two points; I think it might throw some light on this case.

[fol. 437] Mr. Schroder: I don't remember Mr. Inman—

Mr. Joiner: I will withdraw the question.

By Mr. Joiner:

Q. Coach Pearce, you have testified with reference to the various things revealed by this note. Would you give us your opinion as to whether or not some of the things reflected in this note are also reflected in the film of the 1962 Georgia-Alabama game?

A. We are in two formations, and I think we have answered this as we went through.

Q. We did on one or two particular ones, but I am not sure we covered it all. I wanted a general "yes" or "no" answer—

A. Yes; yes.

Q. —before we go into the film. Coach Pearce, I wonder if you would be good enough to show the film to the Jury, and during the course of the film, if you run across some particular play, formation or anything else that is referred to in these notes; if you would run that part again and point it out to the jury?

A. Yes, sir.

Mr. Schroder: Don't I get a little cross-examination here?

The Court: Sir?

Mr. Schroder: Don't I get some cross-examination here?
[fol. 438] The Court: Yes, sir; I will let you cross-examine him when he gets through with him.

Mr. Joiner: I believe the film is a part of our direct.

The Court: Yes, sir. I will let you cross-examine him and let you run the film back and question him about the film.

Mr. Schroder: Fine.

The Court: All right, sir. Let Coach Pearce—wherever is convenient for you, sir, to describe the plays to which you—

Mr. Joiner: I wonder if the Jury would be able to see.

The Witness: I will get a chair.

The Court: We have got to have the Court Reporter where he can get down what you say. When the screen is put up, I want to see whether you can see it.

Juror: So far, it looks fine.

[fol. 439] The Court: How about you?

Juror: This stand may be in the way, this podium.

The Court: Remove this podium, temporarily.

All right, we can turn off some lights when you get it adjusted. Are you ready?

The Witness: Yes, sir.

The Court: Will the marshal turn off—keep everyone out. Don't let anyone leave or anyone come in the court room.

The Marshal: Everyone remain seated, please.

The Court: All right, sir.

The Witness: The Georgia team will be in white; the Alabama in the dark jerseys. Georgia will kick off to Alabama.

This is Georgia kicking off, covering the kick. Alabama is on offense; Georgia is on defense.

Now, to establish things right now, this is what we call a slot left. Now, our left halfback is between the left end

and the left tackle, and the distance between the left end and the left tackle is supposed to be three yards. Our [fol. 440] regular fullback is in his regular spot behind the quarterback and our right halfback is right.

This is our slot left formation in this picture, and in this motion, if we talked about fly or anything, when the left halfback leaves early like this, this is a fly motion.

Now, just to show you right here again, this is a slot right formation. The distance between the right end and the right tackle is supposed to be three yards. That is our right halfback over there, fullback is in his regular position, and now the left halfback is behind the left tackle in the backfield.

This is a slot right. Rakestraw throwing, and it was intercepted; Alabama's ball.

Alabama is on offense. They throw a touchdown pass to Williamson, first play. They had us 7 to 0.

Our first formation is a slot right. This is slot right. There is throw to Mickey Babb.

This is slot right.

This is another slot right. It is hard to see.

Now, for the first time in the game, is what we call our pro-formation. This is a pro left, and a situation in the backfield and the left end, the left tackle is the same as slot left. The only difference is that our right end is split.

And Mr. Joiner asked me to point out anything that was relative to the notes. This left halfback, number 35 is going in what we call long fly or long motion right now. He gets passed the other halfback by the time the ball is snapped right there. We had a penalty on this play; it was called back.

This is a punt formation. We tried to run the ball.

Next is a punt formation and we kicked the ball. Some real good kicking.

[fol. 441] Now, I think just to point out whether it is reaction but to point out, Woodward is coming into the picture right now on the right. He is our safety man. He comes up and gets on the pile, and I think that that is what people would call "commits fast".

Judge, do you want anything pointed out more than once?

The Court: No, sir.

Mr. Joiner: I think once is enough, if you feel like the Jury understands that the one time.

The Court: Is it necessary for you to show all the film to bring out your testimony or just certain portions?

The Witness: I'd like to show the fourth quarter to show the guards pulling on sweeps.

The Court: You show it the way you feel like.

The Witnesses: This is a slot right. Another slot right. The third is a slot right, and then we punt. This resulted in two points for them. Our center snapped the ball over the head of the kicker, Jake Saye, and he is tackled in the end zone. Gave them two points.

This is Georgia kicking off, a free kick.

That is the end of the quarter, and we will have to change reels now.

[fol. 442] The Court: All right, sir, turn back on the lights. Coach, do you have to illustrate—to illustrate your point, can you show the—I want you to show anything you might feel important, but is there anything pertinent to your testimony in the second quarter?

The Witness: They have seen the formations. That is up to Mr. Cody. I think one thing in the fourth quarter it shows the guards pulling on the sweep, and I believe that we can show our formation, show the guards pulling. You have seen Woodward already. I would think you could see everything with the fourth quarter.

Mr. Joiner: That would be acceptable, Your Honor.

The Court: I wanted to cut down on the time.

Mr. Joiner: Yes, sir. I believe it would be all right to go into the fourth quarter. That would be fine.

The Court: All right. Mr. Marshal, just shut the door and don't let anybody out or anybody in.

The Marshal: Everybody have seats, please; remain seated.

The Court: You ready?

[fol. 443] The Witness: Ready.

The Court: All right, sir, turn off the lights. 7

The Witness: Georgia again on defense.

Georgia receives, and our first formation will be pro right, and this is the first time in the—we have run it in the film before, but this is the first time it has been shown here.

This our pro formation to the right with our left end split, and in the Alabama game we moved our right end—not our right end; we moved Mickey Babb when he was in the game, was going to be our split end all the time.

Now, we have not established who “him” was in our screen pass, but this is our screen pass coming up here, our right halfback is on the long fly, and you can see it is a drop-back pass. I don’t know who “him” is. We screened to our left halfback.

I will show you once more. This is our screened pass in the Alabama game, right half, long fly.

That is pro right ninety-nine.

Here is pro right ninety-nine, and on this play—now, on your right guard—well, we have an end; the right guard is pulling and leading up the hole. Right there he blocks on whoever this is, fifty-something. I don’t know what his number is. That is our right guard and that is a pull on a sweep.

This is another one right next to this. And the number has an 8 on him, whoever it is that pulled. It is pro right ninety-nine again.

[fol. 444] This is pro left and this is a pass, a throw to Babb.

I think we have touched on everything right now, Your Honor.

The Court: All right, sir.

The Witness: If you want to—

The Court: All right, sir, cut back on the lights.

The Witness: You want me to run this back now or later?

The Court: No, sir; I imagine you have some more questions.

Mr. Joiner: I have one more question to ask him, please, Your Honor.

The Court: All right, sir.

By Mr. Joiner:

Q. Coach Pearee, would you state whether or not to the best of your recollection Coach Wallace Butts attended any of the practice sessions prior to the 1962 Georgia-Alabama game?

A. I know that he was there sometimes; I don't know how many times. I know he was there.

[fol. 445] Mr. Joiner: No further questions, Your Honor.

The Court: All right, sir; go ahead, Mr. Schroder.

Cross-examination.

By Mr. Schroder:

Q. Mr. Pearce, when you were showing the film a moment ago you described the formations that Georgia was going into on each occasion. How did the formation Alabama was in differ from those Georgia was in?

A. Alabama used a slot and a pro formation also.

Q. Each time that they were on offense they were using the same formation Georgia was using when Georgia had the ball?

A. Yes, sir.

Q. All right. If I remember correctly, the film showed the first time Georgia used the pro-set, they threw and completed a pass, didn't they?

A. Yes, sir.

Q. And as I saw it from the screen, from the film, when Georgia used its screen pass, they completed it and made a gain?

A. Yes, sir.

Q. Didn't look like anybody was too well defending those in the film that we saw, did it; they weren't expecting it or not.

A. I don't know whether they were expecting it or not.

Q. Well, I mean—

A. We made five yards on it.

Q. You made your play successfully, anyway, on each of [fol. 446] those two occasions I described?

A. Yes, sir.

Q. That is the pro-set and also the screen?

A. Yes, sir.

Q. In the fourth quarter you showed us a scene there where you say the guard, the on side guard pulled and blocked the Alabama linebacker, I believe you said?

A. He blocked the linebacker on one occasion, and the next time he didn't block anybody.

Q. And missed his block the next time?

A. It didn't look like to me he even tried to block him.

Q. Anyway, the first time we used—when I say “We”, I mean Georgia—the first time, as you related, the right side guard pulling on sweep, they gained yardage, didn't they?

A. Yes, sir.

Q. Evidently Alabama wasn't expecting that gain?

A. Well, from the yardage he had made it was hard to gain on Alabama.

Q. The three instances I have described here we did gain on them, didn't we?

A. Yes, sir.

The Court: Would you talk out just a little bit louder, Mr. Schroder, I can't hardly hear you.

Mr. Schroder: Who, me?

The Court: Yes, sir. I can hear Coach Pearce all right. [fol. 447] Mr. Schroder: Excuse me, Your Honor. I apologize.

The Court: That's all right; I am kind of deaf.

By Mr. Schroder:

Q. Before I go into the details of these notes, only some of which Mr. Joiner discussed with you on direct-examination, there are one or two questions that I wish to put to you, Coach. Before I do that—and the first one is this. One of the notes, I believe it is the one on Page 5, we have been talking about slot formations here a moment ago, and I think the other formation that you have been talking about is known as the pro-set which Georgia used against Alabama and which Alabama used against Georgia. Is there anything in these notes that you have there which states that those are the two formations to be used against anybody?

A. No, sir; it describes the two formations.

Q. Is there anything in those notes that even indicates that those are the only two formations that one team was to use against the other?

A. It is only two formations that I know that are mentioned.

Q. I see. Is there anything in the notes that says, in effect, that these are the only two formations that will be used?

A. Mr. Schroder, I don't think it says that they are or are not going to be used.

Q. That's right, sir. You remember—you said that when your deposition was taken—let me get your deposition. Have you read your deposition since it was written up?

[fol. 448] A. Yes, sir; yes, sir.

Q. You remember this question being asked you then: "Was there anything in those notes to indicate that the party who was getting that information to rely upon that; was there anything stated that those were the only two formations Georgia was going to use?" And the answer was: "Not in the notes, no, sir." That is what your testimony is today, isn't it?

A. Yes, sir.

Q. Now, from those films you indicated also an instance in which Woodward committed himself fast, you said, because he made the tackle?

A. I don't believe he made the tackle; he came up—

Q. Came up?

A. —and piled on the tackle.

Q. And that is what he is supposed to do, isn't it, on a running play?

A. A safety man is primarily responsible to prevent touchdowns. If he pops loose, he is supposed to tackle him; yes, sir.

Q. But Mr. Woodward, on that occasion that you showed us on the film, kept himself between the ball carrier and the goal line?

A. Yes, sir.

Q. And that is what his job is, isn't it?

A. Yes, sir.

Q. So there wasn't anything indicative about that scene because he was doing what he was supposed to do, wasn't he?

A. Lot of people in coaching never want their safety man to tackle a ball carrier within five yards of the line of scrimmage. I can't say what we do, because I do not coach the safety man.

Q. Well, are—did you mean to indicate by that film [fol. 449] there was something wrong with what Woodward was doing?

Mr. Cody: Speak a little louder, Coach.

Mr. Schroder: Me?

Mr. Cody: No.

The Witness: Were you talking to me, Mr. Cody?

The Court: Mr. Cody asked that you speak a little louder, if you could.

The Witness: Okay; yes, sir. In a press box you try to find people that are getting out of position. Whether he was out of position or whether he wasn't, he was up on the line of scrimmage and he is our last line of defense.

The Court: In other words, the point you are making, he shouldn't have been making the tackle on the line of scrimmage or piling on the line of scrimmage, being the safety man; is that correct?

The Witness: Unless the ball carrier broke a loose. If there is nobody there to tackle him, we would hope he would tackle him. We would—

The Court: He wouldn't make the tackle on the line of scrimmage if the ball carrier broke a loose, would he?
[fol. 450] The Witness: No, sir; he would not.

By Mr. Schroder:

Q. The point, Coach, is that if the safety man keeps the ball carrier between himself and the Georgia goal line, he is performing his job, isn't he?

A. If the man is a ball carrier, if it is not a fake to a man, if the man is a ball carrier; yes.

Q. Let me be more specific and refer to the play—the specific play that you pointed out when the film was being shown. The quarterback on that instance, or the safety man on that instance was doing what he was supposed to do, was he not, or do you feel qualified to answer, since you said you weren't coaching the backfield?

A. That's right. On that very play I'd feel—I'd say I am not qualified to answer that question.

Q. Let me ask you, if you had information for example, that the Alabama safety man committed fast and you were preparing the University of Georgia to play Alabama on the following Saturday, and you relied on that information, what would you be inclined to do insofar as preparing your offense, the passing offense is concerned?

A. I think you'd try to take advantage of that.

Q. You would try to take advantage of that weakness, wouldn't you?

A. Yes, sir.

Q. Now, you have seen these films, some—how many times, eighteen or nineteen times?

A. Yes, sir.

Q. All right, sir. When you—when you say, for example, that Babb is your best target and he is therefore thrown [fol. 451] more passes than the others, he was thrown quite a few passes in the Alabama game—

A. Yes, sir.

Q. —and in many instances he was in position to catch them; was he not, and he just dropped them? Make sure, I am not being critical of Babb; I am just stating a fact.

A. He had, I will say, several; that doesn't mean any certain number.

Q. Speak up, please, sir.

A. He had several chances to catch the ball and did not catch it; yes, sir.

Q. The reason he did not catch it, however, was not because somebody had him well defended, but because he dropped it; isn't that right?

A. Yes, sir.

Q. If someone called you or someone gave you information which you thought you could rely upon preparing Georgia to play Georgia Tech, and they told you that Georgia Tech had in its line the greatest tackle in the history of Georgia Tech, and you relied upon that information, how would you prepare your running game that you were going to use against Georgia Tech in your next week's game?

A. Mr. Schroder, we—I think we established this before that that didn't mean Rissmiller was the greatest lineman. I mean, I would just like to check back and see what's established.

The Court: He wasn't asking you that question. He was asking you—

By Mr. Schroder:

Q. I am asking you, from the notes here, sir, this is in- [fol. 452] formation that was supposed to have been in the notes, "Reismueller, greatest in history;" all right, sir, you are the coach of the University of Georgia, and I know

something about Georgia Tech, information has reached me that you don't know, and I tell you that Georgia Tech has the greatest tackle in the history of the school by the name of Mr. Jones, plays left tackle. How would you react if you felt you could rely upon that information in preparing your offense for the forthcoming Georgia Tech game?

A. I—now, we are assuming the same position as Alabama and Georgia, that there were no films to look at?

Q. Name any school.

A. No; I just wanted—no films to look at, just from what somebody tells you?

Q. Yes, sir.

A. Well, I am sure I wouldn't set my basic offense to run at this person. I—I might instruct—I think I would instruct my quarterback that in situations where we needed yardage not to run at this person.

Q. Now, you have reviewed these films on any number of times, I think fifteen or seventeen, a number of times?

A. Yes, sir.

Q. Did Alabama direct its running plays away from Rissmiller?

A. I don't believe that they—I think they ran them wherever they wanted to.

Q. Rissmiller unfortunately was the target on several occasions and unfortunately he didn't make too many tackles, did he, again being sure for the record I am not being critical?

[fol. 453] A. I understand that. I will answer that "yes", and then I will qualify it by saying this, that Rissmiller, along with several other boys in that football game, were sophomores, and it is a tough job for a sophomore to open against Alabama.

Q. There is no question about that, sir; we are in a hundred per cent accord on that, but my point is really this. If this information that is listed in this note was given about Rissmiller being the greatest in history, and Alabama taking this information, they did not indicate by the way they had their running plays going that they were relying on this information, did they?

A. No, sir. They just ran every place.

Q. Just ran right at him like they did anybody else?

A. Yes, sir.

* * * * *

LEROY PEARCE having resumed the stand, testified further as follows:

Cross-examination (continued).

By Mr. Schroder:

Q. Coach Pearce, during the first half of the Alabama-Georgia game, do you know how many times Georgia did use the pro-set?

A. No, sir; but I can check it, if you'd like me to.

Q. Do you have anything to check it by?

A. Yes, sir. Five times.

Q. Five times?

A. Yes, sir.

Q. On four out of those five times it was used successfully, wasn't it?

A. Yes, sir.

Q. During the half Alabama changed its defense to be [fol. 454] used against the pro-set in the second half, didn't they?

A. No, sir; they never changed their defense until we started running into the sidelines late in the fourth quarter.

Q. Well, during the first half, do you know whether—what player Alabama had out guarding the split end?

A. They had their rover man, that is, Williamson; he was an end.

Q. Do you know during the first half they had Jordon out there on occasion also?

A. No, sir.

Q. You don't know that, sir?

A. No, sir.

Q. But you do know—

The Court: You mean you don't know it or they didn't have him out there?

The Witness: Well, what I—I—I would—I would have to see it right now to believe it.

Mr. Schroder: Sure.

The Court: I didn't understand your answer.

By Mr. Schroder:

Q. Who is Jordan?

A. Sir?

Q. Who is Jordan? Is it Leroy Jordan?

A. Yes, sir; Alabama center.

Q. Center?

[fol. 455] A. Linebacker; yes, sir.

Q. Is he a fairly good ball player?

A. Yes, sir.

Q. He is the one, I think, that made All American?

A. Yes, sir.

Q. As I said, you did testify, though, after you have examined your notes, that on four out of the five times that Georgia used the pro-set in the first half it was done successfully?

A. Yes, sir. And we say we made ground, that is successful.

Q. That is really the object, to gain ground?

A. Yes, sir.

Q. When the film was being shown here before we had the luncheon recess you referred every time that Georgia was on offense what formation they were in as slot right or slot left?

A. Yes, sir.

Q. Now, during that same quarter you did not, of course, say anything about what formations Alabama was in when it was on offense, but do you recall what formations they were in?

A. They were in the exact same formation.

Q. So, if you were looking at the film and describing what formations Alabama was in, you would be saying slot right, slot left, or pro-set?

A. Pro right or pro left.

Q. Pro right or pro left?

A. Yes, sir.

Q. During the running of the film, I don't recall that you described any particular play that Georgia was running off of the formation that it happened it be in, but let me ask you this. You did see both Georgia on offense, as we did, and Alabama on offense during the first quarter and the [fol. 456] last quarter. Now, did you see any plays that Alabama used that Georgia does not also have in its repertoire, or would you have to look at it again?

A. Well, I can say this, that Alabama ran a hand-off and we didn't.

Q. A Hand-off?

A. And that is just one play.

Q. Yes, sir.

A. But I—I—I wouldn't want to say.

Q. Without looking at them again?

A. Yes, sir.

Q. What, please, Coach, is the difference in pulling a guard on a sweep and a switch block?

A. Well, now—

Q. Do you know the definition of switch block; you know what that means?

A. Well, now, we did not use a switch block. We used a swing block, and I think that is probably what you are referring to.

Q. All right, sir. What is a swing block?

A. A swing block—you are going to change assignments—

Q. Yes, sir.

A. —and the tackle is going to block down and the guard is going to pull around the tackle and block in that area.

Q. Block in the tackle's area?

A. Tackle's area.

Q. The tackle's zone, really?

A. I—I would say that that is probably correct.

Q. What is happening, then, on a swing block, for example, the man on the other team that the guard is sup-

posed to block is on his outside shoulder, and with the play going that way, the guard can't block him, so he and the [fol. 457] tackle switch assignments with the tackle out here; he blocks the man that the guard was supposed to block but couldn't, and the guard blocks the man the tackle was supposed to block when he takes—when they switch the assignments; is that correct?

A. Yes, sir. He will pull around the tackle and—he will pull around the tackle and block the first he sees.

Q. What is the difference between that which you describe as swing block and pulling a guard on a sweep?

A. If you pull a guard on a sweep, you tell him to pull up the first place there is daylight, and if you swing a man, he would actually have—if there is a man on the tackle, he would block the first man he came to.

Q. All right, sir. If Coach Griffith testified yesterday pulling a guard on a sweep meant that that guard was supposed to pull out on a sweep meant that that guard was supposed to pull out and lead interference for the ball carrier, is that your understanding of what pulling a guard on a sweep is?

A. Yes, sir. I would say that in addition to that that the guard—most guards are taught to pull up the first place they get a chance to pull up through the line.

Q. But they are—they are really, when they are pulling on a sweep, running interference for the ball carrier, aren't they?

A. Yes, sir.

Q. And that is different than the procedure we have just described as a swing block?

A. Well, ask me the question again, please.

Q. Swing blocks are used not only on sweep plays but on any play that might—well, off tackle play, they use a swing [fol. 458] block, do they not; they switch assignments when the guard is on the outside of my shoulder and I can't block him in?

A. Any play that is outside; yes, sir.

Q. On a sweep play, that is when, as you have described it a moment ago and as Coach Griffith described it yesterday, when you pull a guard on a sweep, you are pulling him out to lead interference for the ball carrier?

A. Yes, sir.

Q. All right, sir. Now, are you sure that Georgia has now or had—well, “has now” would be unimportant. Are you sure that Georgia had, in 1962, a play such as a sweep where they pulled their on side guard to lead the interference for the ball carrier?

A. Mr. Schroder, I think you are real technical there. I would think at any time a guard pulls around a tackle it would be a pull.

Q. Well, you are using it—you are using it to describe a swing block?

A. Yes, sir.

Q. To you “pulling the guard” means to swing?

A. If you had—if—he would tell the tackle to block down and tell the guard to pull on around the tackle and block.

Q. It is a switching of assignments. You mean pulling him to lead interference; they are the same thing?

A. Well, I think it is a real technical point in the fact that a guard on a sweep may turn up way inside if he sees daylight.

Q. All right, sir. Before we go back to the film here, I want to ask you a question with reference to your description of the slot right or slot left with the split end three yards out, and you said that you had some difficulty getting [fol. 459] the Georgia ends to understand what three yards was, amounted to?

A. Yes, sir. We in practice several times—a lot of times or several times, any amount, we would stop the play because the end would be too wide or too tight and go over to the tackle and step off three yards and tell him that is where he should be.

Q. Well, now, in the film which you have seen often, did you not notice that the end on slot right or the end on slot

left was varied in his position sometimes two yards from the tackle and on other times five yards from the tackle?

A. Well, he wasn't supposed to be. He is supposed to be three yards—I will tell you, it is real hard to tell from the film because of the angle of the camera.

Q. You saw the game yourself from the press box, didn't you?

A. Yes, sir.

Q. Would you say that Georgia's ends were always three yards?

A. No, sir; they were not always three yards. They were supposed to be.

Q. Don't you know that on many occasions that the end, Mickey Babb, moved his position from three out to five, back to two in order to take care of the offensive—I means, the defensive end playing opposite him?

A. Well, I think that would come under the discipline that we talked about earlier. He should have been three yards.

Q. But you know that he wasn't, don't you?

A. No, sir.

Q. You were watching from the press box?

A. Yes, sir.

[fol. 460] Q. You say he was three yards on every time?

A. He was—he—no, I will not say that. He should have been three yards.

Q. I know, but I am—in the game he wasn't doing what you had coached him to do, though, was he?

A. If he was supposed to be—he was supposed to be exactly three yards, and I will assume that he may have been two yards or he may have been four yards; yes, sir.

Q. All right, sir. Well, then, if that is correct, then he is not doing what the notes indicated that he ought to have done, is he?

A. If he was supposed—if he was supposed to be a three-yard end every time; no, sir.

Q. And if whoever was being told this was relying on that, then he wouldn't be getting much benefit out of it,

would he, if he was relying on him being three yards so he could set up his defenses to meet it but the man didn't know what the note said he was going to do, that—that is not too good, is it?

A. Well, I think that we would have to sit down and—

Q. All right, sir.

A. You can't tell from the film, but I think that he was three yards most of the time.

Q. He is going to be here as a witness. The matter which we discussed before lunch about the first touchdown which was shown on the screen that Williamson scored, the homerun—

A. Yes, sir.

Q. —the man assigned to defend him on that play was a man who was not in your plan as a defensive player, was he?

A. The man assigned—the man assigned was not; that is correct.

[fol. 461] Q. The man assigned to defend Williamson on that play had hardly played any defensive football at all, had he?

A. Now, we are speaking of practice, because he had never played in a football game before, college game.

Q. Well, on practice; you didn't practice him on defense, did you?

A. Not very much; just so we could line him up.

Q. On defense against the Alabama pro-set did Georgia employ the same defense or type of defense that Alabama employed against Georgia's pro-set?

A. Alabama was using the rover defense, and we were using the overshifted six. They used a rover man to the wide side of the field most of the time, and we overshifted most of the time. We just overshifted to the slot away from the split end most of the time.

Q. Did you change that at the half?

A. No, sir; we just tried to get our ends to play it better.

Q. Sir?

A. No, sir; we tried to get our ends to play it better.

Q. You used the word "overshifted"; Georgia employed an overshift in its defense against Alabama?

A. We used—we used a half a man overshift; yes, sir.

Q. Did Alabama use an overshift in its defense against Georgia?

A. They used a full overshift; yes, sir.

Q. Both teams were then using overshifts?

A. Yes, sir.

Q. Without going into too much detail, I want you, if you can remember from having seen the film, it was not [fol. 462] shown today, the part I am now talking about; when Alabama scored its second touchdown, do you remember how that—

A. I remember just exactly how it happened.

Q. Would you describe it to us, please, sir?

A. They were in a pro left; they had the right end split.

Q. Pro left, right end split?

A. With a right end split.

Q. That was the same formation they scored their first touchdown off of, wasn't it?

A. Yes, sir.

Q. The same formation when they scored their second touchdown, the pro left, right end split?

A. Yes, sir.

Q. Then what happened?

A. And they drove their end deep on our halfback and turn him in towards the middle between our halfback and safety man. The halfback came out in the flat about six yards down the field, and our end started to be playing off, did not stay off but started to rush the passer and left the right halfback wide open, and then they threw the pass.

Q. And they threw to him and it was a touchdown?

A. Yes, sir. He ran on over with the ball.

Q. So, unfortunately, that resulted from a Georgia error on the part of its end play?

A. On the part of its end and halfback play; yes, sir.

Q. All right, sir. You remember the next touchdown Alabama scored, how that was scored?

A. I don't know the play it was on, but—

Q. Well, wasn't it off of the same formation, Georgia's pro-set, pro left?

A. They scored another—they scored another play; I [fol. 463] am sure they went over the one yard line on the same type play with the split end and turning into the middle and catching a low pass. It was the same type formation; yes, sir.

Q. Was the end, the Georgia end, also supposed to cover the flat on that?

A. Well, Mr. Schroder, let me straighten that up.

Q. All right, sir.

A. Our end was given the opportunity to play in three different spots. He was either, as we call it, in a triangle, which means between the tackle and the end about four or five yards off the line of scrimmage; he could go out to the inside shoulder of the end and play out there. Or he could move back in and rush the passer. Now, it is a guessing game, so I don't think that you could say he is wrong. Maybe he didn't do the right thing on that play, but I don't think you can say he is wrong.

Q. Well, I haven't said he was wrong. I was using your language when you said that the touchdown resulted from the—

A. The first touchdown when he was off the line of scrimmage and started to rush; yes, sir; the second time he was on the line of scrimmage and forced and the ball was thrown over.

Q. Do you know of any play that Georgia has that Alabama doesn't have?

A. I couldn't answer that question. I don't know Alabama's plays.

Q. Have you seen about every play Georgia used also used by Alabama or other teams that you played during 1962?

A. I would say that most teams with the same formations will have very similar plays.

Q. All right, sir. Most teams in the Southeastern Conference [fol. 464] do have the formations that we are talking about now, the pro-set and the slot?

A. I would assume that's correct; yes, sir.

Q. All that use the "T" formation, that is?

A. Everybody except Tennessee.

Q. Everybody except Tennessee uses the "T" formation?

A. Yes, sir.

Q. You said this morning that during the middle of the season it would be impossible to change a formation—

A. No, sir.

Q. —or make a drastic change. If I have misstated the answer you gave, correct me.

A. The thing I said is it would be almost impossible to make a drastic change in your offensive plan or defensive plan in one week, I mean, just completely come out with something new.

Q. Yes, sir. You are familiar with the fact that Alabama did change its offensive pattern in the middle of the season or towards the end and got a whole new formation that they used in the game against Tech?

A. Yes, sir.

Q. And Tech did the same thing against Alabama?

A. Yes, sir.

Q. They both went into a spread on the same day?

A. Yes, sir.

Q. And neither had used a spread before?

A. Yes, sir.

Q. Did you know that both called it the same thing?

A. Called it—no, sir.

[fol. 465] Q. It had the same name, both Tech and Alabama, for their spread formation?

A. No, sir.

Q. Well, you didn't know. Let me return to the notes, now, please, sir, before I ask you some questions about the film. There were quite a few questions asked you—

Mr. Schroder: Excuse me.

The Court: Do you want some water, sir?

The Witness: No, sir; thank you.

By Mr. Schroder:

Q. You were asked quite a few questions about them this morning, and I want to make sure your answer is as you want it to be in the record. The first note on the first page, in fact, the only note on the first page having to do with this matter is "Reismueller, greatest in history", and you and I have, I believe, discussed that.

A. Yes, sir.

Q. That insofar as you know he is not the greatest in history to attend Georgia?

A. Georgia; yes, sir.

Q. On top of the second page there is a note "Rakestraw to right". Now, does that mean anything to you?

A. It means absolutely nothing.

Q. The next note reads "optional left pass if can block man on corner, keeps running". Now, do you know what [fol. 466] Georgia's optional left pass play is?

A. We didn't have pass pattern we called the optional left.

Q. Coach Griffith said that yesterday until he looked at a 1961 game plan, and they did use an optional left pass.

A. I am talking about 1962. We did not have—we did not have—what did you want me to answer?

Q. With reference to that second note "optional left pass if can block man on corner, keeps running"; does that mean anything at all to you?

A. To just—as far as it is concerned to me, if it meant—let me answer it this way. We didn't have that as a pass pattern, but if an optional pass was called, I assume a quarterback would run with the football if he was blocked; you would hope he would.

Q. You say you did not have that optional left pass, Georgia had no play like that in 1962?

A. No, sir. We had a—we had a—let me qualify that. We had a roll-out pass which, if it is a run or pass, some people call it an option to run or option to pass. We had that.

Q. Yes, sir.

A. But if the pass is called "optional left pass", we did not have that and would not mean anything to me.

Q. That would mean the quarter back would have an option as to which end to throw to down the field, the tight end or close end, being the right, and crossing over, or the left end down deep?

A. Well, if you said "optional" to me, it would mean that the quarterback is going to run or throw or else have two or three receivers downfield to throw; yes, sir.

Q. All right, sir. But you say Georgia had nothing like [fol. 467] that in their plans for Alabama?

A. Again, it is a technical point. We did not have a play we called "optional left pass". Anytime the quarterback drives out with the football, it is an option.

Q. But you did not have an optional left pass; that is the way the note reads, isn't it?

A. Yes, sir.

Q. I think you discussed with Mr.—maybe with me, the next note, which is "well disciplined ball club".

A. Yes, sir; have discussed it with you.

Q. And unfortunately Georgia was not well disciplined during the game? Alabama—the next one we have already talked about on top of Page 3, "on side guard pulls on sweep". The next note is "don't overshift", and you have already testified that both Georgia and Alabama were overshifting their defenses; that's correct, isn't it? You testified to that?

A. I testified that both Georgia and Alabama did overshift their defenses.

Q. All right, sir. Now, the next note is "Woodward commits fast, safety man". We have agreed that Woodward is the type of man who likes to get in and make a tackle?

A. Yes, sir.

Q. Now, if that sort of information—did we discuss this before lunch?

A. I don't believe we discussed it; we have discussed it.

Q. "Woodward commits fast, safety man"; that would indicate to you, as Alabama's Coach, that perhaps you would take advantage of it by throwing a pass into his zone because he had committed himself by coming up? Do [fol. 468] I make myself clear?

A. Yes, sir; you are very clear, very clear.

Q. Well, now, I believe you testified that Alabama did not take advantage of that—of the fact that Woodward committed himself fast because they threw no passes into his area?

A. That is exactly correct.

Q. All right, sir. Next one on Page 3, last one on Page 3 is "weak defense, anybody except Blackburn".

A. Yes, sir.

Q. And I believe your testimony this morning was that he had been ill or was ill and didn't play but five minutes?

A. I didn't put any time on it.

Q. Very shortly?

A. Very little; yes, sir.

Q. Well, just as a matter of, say you are an expert, if someone were trying to help somebody in a game and this fellow was the best man and he was sick, I'd be inclined to tell the opponent he was sick and he didn't have to worry about him, wouldn't you?

A. If he wasn't going to play and he know it, I would think that would be pretty good.

Q. He was sick for some week or so around there on the field, was he not?

A. Yes, sir; he was sick during our practice before the Alabama game.

Q. During practice?

A. Yes, sir.

Q. The next entry on top of Page 4, "Babb, slot right, split right end out"; that is anything in that note that means anything more than slot right?

A. No, sir.

Q. If you are in slot right, the right end has to be split [fol. 469] out, doesn't he?

A. Yes, sir.

Q. Nothing unusual about that; everybody that uses that slot does it that way, don't they?

A. That is a slot?

Q. A Slot.

A. Yes, sir.

Q. And everybody who uses the "T" formation uses a slot, as you know of here in the Southeastern Conference?

A. I assume so; yes, sir.

Q. That wasn't something new?

A. Slot formation?

Q. Yes, sir.

A. Oh, no.

Q. Wasn't new at Georgia?

A. No, sir.

Q. "Long count" is the next note on Page 4, "left half in motion". Now, I think that was pointed out by you on the film at one time; didn't you say a man—

Q. Isn't that a "garden variety" play by teams using the "T" formation?

A. Say it once more, please.

Q. There is nothing unusual; that is a common play?

A. It has come back in in the last few years and most people use it.

Q. Most people use it anyway, don't they?

A. Yes, sir.

Q. Alabama was using it against Georgia, weren't they?

A. I am not sure whether they used the overpass on us or not.

Q. Sir?

A. I am not sure that they used what we call the over-[fol. 470] pass or long motion on us.

Q. This note I mentioned doesn't read "pass"; it reads "long count, left half in motion".

A. I am not sure they used a long motion against us.

Q. You would have to check the film for that?

A. Yes, sir.

Q. But if they didn't use it, they would be one of the few that were not using it in the Southeastern Conference, wouldn't they, Alabama?

A. Yes.

Q. Next note is "best since Trippi, Porterfield". Of course, that is a matter of opinion, but you don't know—you know Charlie Trippi, but did you ever see him play?

A. We have discussed this before in the deposition. As I told you, I had seen him in a couple of films. I had never seen any of the interim football players and I would have no way to judge.

Q. You knew Trippi was also an excellent defensive player?

A. Well, I have heard that he was an excellent defensive football player; yes, sir.

Q. And Porterfield is the one unfortunately who was in the Alabama game supposed to be covering Williamson on that first pass and he wasn't supposed to be in there on defense?

A. Yes, sir.

Q. He is not a defensive player, is he?

A. Well, no, sir.

The Court: What was your last question?

[fol. 471] Mr. Schroder: "He is not a defensive player?"

The Court: Oh.

Mr. Schroder: Speaking of Porterfield.

By Mr. Schroder:

Q. On Page 5, the top note, "Babb on a hook on the goal line"; is there anything unusual about that play?

A. No, sir.

Q. Everybody hooks on the goal line if they are going to pass to the man; they use a hook?

A. Well, yes; yes.

Q. They have that?

A. You don't have as much yardage.

Q. That's right; you can't go down and out. You have only got ten yards; you have to turn around and hook?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. The next one is the one I believe we have discussed at some length, "slot to right, ends normal three yards"?

A. Yes, sir.

Q. There is one thing about that entry, it says "e-n-d-s", "ends normal", which to me would mean he would have both ends split three yards. Does Georgia have any formation where both ends are split three yards?

A. No, sir.

Q. The next note, "right halfback on fly, left half back [fol. 472] quarterback gives to left half, left guard pulling blocks on corner." Does Georgia have any such play like that in their repertoire?

A. I think our countertrap would have to be checked on that; I am not sure.

Q. Well, does that mean anything to you?

A. As it is written, no.

Q. Sir?

A. As it is written, no.

Q. On top of Page 6, I don't believe you have discussed this note.

A. No, sir.

Q. Everybody brings in wide slots when they get down to the goal line, because you need all your power toward the center of the line?

A. To keep people from shooting inside; yes, sir.

Q. That's right. That is a common variety formation, isn't it?

A. Yes, sir.

Q. Now, you discussed this next note at some length on direct-examination, and all it says, "can't quick kick". Mr. Burnett added to that Georgia has nobody that can quick kick. Now, without—nothing said here about what formations you are in when you quick kick, is there?

A. No, sir.

Q. Well, that is an untrue statement, then, because Georgia can quick kick and does quick kick, doesn't it?

A. Yes; we quick kick.

Q. Yes, sir.

A. From the quick kick formation.

Q. That's right. But this says simply they can't quick kick, and that is not true, is it?

A. We can quick kick from a quick kick formation.

[fol. 473] Q. Therefore, what? This is not true, is that right?

A. Not true.

Q. Not true. The next one, I believe, we discussed also. You discussed with Mr. Joiner on Page 6—

A. Yes, sir.

Q. —“slot right, right half on fly, screen to him.” Georgia does not have that play in its offensive plan, does it?

A. Did we ever decide who “him” was?

Q. Let me put it to you this way. How many individuals are mentioned in the notes?

A. The right halfback is mentioned.

Q. It refers to one individual and that is the right half?

A. Yes, sir.

Q. And the “him” would have to refer to the only one that is mentioned, wouldn't you think?

A. If it refers to the right halfback, we do not have the play right.

Q. Is there anyone mentioned in there other than the right half?

A. No, sir.

Q. Well, then, Georgia does not have the play described in that note, does it?

A. Not that screen pass; no, sir.

Q. As a matter of fact, if someone was trying to give Alabama some information on what Georgia's offense was and gave them that information, and they spent two weeks planning, working their boys in defending against that play, and it turned out at the game they didn't throw to

the man the note says they are going to throw it to but threw it way out the other side, that would be nice, would it?

A. No, sir.

Q. Throws it the opposite way? Your screen pass calls [fol. 474] for an opposite way than the way this is written, doesn't it?

A. Opposite direction; yes, sir.

Q. Opposite direction?

A. Yes, sir.

Q. All right, sir. The next one reads, "29-0 Series, Babb catches everything they throw." As I understand it, Georgia does not even have a series known as 29-0 Series?

A. No, sir.

Q. I think it was testified to, however, yesterday, that Georgia has what is known as an 029?

A. 029, yes, sir.

Q. And that is known as the outside belly?

A. Yes, sir.

Q. That is when the quarterback gets the ball, comes out here half into the other back's belly and half into his, and they decide when they get to the line of scrimmage who is going to take it, in effect?

A. Yes, sir.

Q. "Babb catches everything they throw" couldn't—do they ever throw off of that 029?

A. I didn't think that is what you were going to say.

Q. Do they ever throw off of outside—

A. We don't have—for the Alabama game we did not have an 029 pass.

Q. All right, sir.

A. We had an 037, which is—which is the pass that comes off—

Q. Comes off the other end?

A. I mean, you have to assume a lot there.

Q. Certainly you did not have a 29-0 series for the Alabama game and you did not have an 029 pass for the Alabama game?

A. No, sir.

[fol. 475]. Q. Well, I think you anticipated the next one. Mickey Babb does not catch everything that is thrown?

A. I thought you would ask me that. No; he did not catch everything. I wish he did.

Q. I wish he did too. The next one on Page 7, I think we have talked about that?

A. Yes, sir.

Q. And that is a common variety formation, "slot right, left end out fifteen yards" known as the pro—that would be called a pro left—no, that is a pro right?

A. We call it pro right.

Q. Pro right. And that is a common variety formation for all teams using the "T" formation?

A. Yes, sir.

Q. And there is nothing in these notes to indicate that that formation or any two formations are to be used by any team being discussed, nothing in the notes to that effect?

A. No, sir.

Q. Now, the final note having to do with a defense, "drop end off, contains with tackle". That is the—what you were describing a moment ago that Georgia was doing?

A. Yes, sir.

Q. When Alabama scored the second and third touchdowns, because the ends—well, the first time the end didn't—was out of position, let's put it that way?

A. Yes, sir; he was wrong; yes, sir.

Q. And, any way, Alabama used that same thing against Georgia, did they not? Well, I saw it in the film.

A. I am not trying to—I am just—with their monster [fol. 476] formation, they—well, yes, sir; they would have contained for tackle.

Mr. Schroder: All right, sir. Your Honor, let me confer just a minute here.

The Court: All right, sir. Let me ask a question.

Examination.

By the Court:

Q. I am certainly no authority. Did Saye play quarterback?

A. Yes, sir.

Q. Rakestraw play quarterback?

A. Yes, sir.

Q. Anytime you got ready to punt, Saye had to be in?

A. Yes, sir.

Q. Rakestraw never punted?

A. No, sir.

Q. So, on an ordinary formation, on a "T" formation the quarterback stands right behind the center, doesn't he?

A. Yes, sir.

Q. And you had nobody who could quick kick other than Saye when he was in there.

A. Yes, sir.

Q. Therefore he couldn't be immediately behind the center?

A. Correct.

Q. He would have to be at least two, three, or four yards, how far?

[fol. 477] A. We placed him six yards.

Q. Six yards?

A. Yes, sir.

Q. So he couldn't run from a true "T" formation, quarterback position, Saye couldn't, and punt?

A. No, sir.

Cross examination (continued).

By Mr. Schroder:

Q. Can any other quarterback?

A. No, sir.

Q. It is physically impossible, isn't it?

A. Correct.

Q. When you kick the center right in the—if you did it—

The Court: Isn't it possible sometimes, or how do you true quick kick; if you had a halfback you could quick kick?

The Witness: If you had a halfback to quick kick, there is two ways to do it. One, you can give him a direct snap between the center's legs and between the quarterback's legs too, and he sidekicks. The quarterback can take the ball, pitch it to him, and he can take a sidestep and kick it. We could do that—if we could do it we could do it out of our slot or pro formations, but we can't.

Mr. Schroder: We had it over there about two years ago when Bobby Walden tried to quick kick, Your Honor; I [fol. 478] think you have seen this; and he kicked it right into the fullback's back.

The Court: I remember that.

Mr. Schroder: You remember that?

The Court: How does Georgia Tech quick kick, or do you know?

The Witness: They have always quick kicked with their fullback.

The Court: The quarterback would be the—would be standing right behind the center?

The Witness: Yes, sir.

The Court: And so—under that condition there would be an element of surprise, wouldn't there?

The Witness: Yes, sir.

The Court: Which is the chief weapon of a quick kick, isn't it? I mean, a chief point?

The Witness: Yes, sir.

[fol. 479] By Mr. Schroder:

Q. When you got Saye back there to quick kick, they can't defend against the quick kick, because they know he can run and they know he can pass, don't they?

A. Correct.

Q. They don't know he is going to quick kick, do they?

A. No, sir.

Q. And they better not plan on him quick kicking; it will pass right over their heads, won't it?

A. I would hope it would; yes.

Mr. Schroder: Yes, sir; that's all.

The Court: You don't have any further questions? Any further questions?

Mr. Cody: No, sir.

Mr. Schroder: I was going back on the film; I will wait, I mean, when my side is coming up.

The Court: All right, sir.

Mr. Joiner: No questions, Your Honor.

The Court: Thank you, sir.

[fol. 480] (Whereupon the witness was excused from the stand.)

The Court: All right, sir, call your next witness.

Mr. Cody: We rest our case, Your Honor.

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PLAINTIFF'S MOTION FOR DIRECTED VERDICT

Mr. Lockerman: Your Honor, under the rulings of the Court, as Your Honor well knows, the Court has ruled that the Defendant in this case had the burden of proving the truth of the charges against the Plaintiff as complained of by the Plaintiff in this article. I know that Your Honor has read the article very carefully, as all of us have, and I know that Your Honor is, therefore, very familiar with the charges that the Defendant made against the Plaintiff.

They charged him, just for the purpose of summarizing briefly, they charged him with being a fixer and a rigger, with having fixed and rigged the game against—between the University of Georgia and the University of Alabama in 1962 by furnishing all of the vital secrets and information concerning the Georgia plays, both offensive and defensive, to Coach Bryant. It also charged him with being corrupt, and, as Your Honor well knows, we allege in the Plaintiff's Petition that the innuendoes in the article are

such that it charges that the Plaintiff did these things and furnished this information as a gambling device and thus [fol. 481] implied, of course, that the Plaintiff either was gambling himself on the game or that he was doing so for the purpose of some gambling procedures.

Now, we take the position that under the Court's ruling, what they call their plea of justification, that they had the burden of proving by a preponderance of the evidence under the law that those things are true. I think when you analyze the things that they have shown by the testimony that they have introduced that the very most that can be said about it, that is, if anything in the way of proof, is that if the information was furnished as they contend, then all that it did in any way according to their own witnesses would have been helpful, and I think that is the word that their witnesses used, "would have helped the opposing team."

Now, the fact is that all that they say about those notes is that—as I understand it, and I am terribly handicapped myself because I don't know very much about football, and I admit it, but, as I understand it, about all they really say about those notes is that they reflect two coaches; Griffith and Inman, indications of two formations. I don't believe that the notes use the word "formations" at all, but the contents, the charges in the article referred to Georgia's plays both offensive and defensive, and certainly that indicates that they—that they claim that Wally Butts furnished the Georgia plays, and certainly it was in the plural as used in the article which carries the implication that he furnished Georgia's plays they intended to use.

The Court: Mr. Lockerman, let me ask you this question. Didn't Coach Griffith, and Coach Inman, and didn't [fol. 482] Coach Pearce testify that in their opinions those notes would have been helpful in defenses against Georgia's plays? Wasn't that the gist of their testimony, or am I wrong?

Mr. Lockerman: That they would have been helpful in—what did you say?

The Court: Helpful in defending against Georgia's offensive; substantially, isn't that what they testified? Isn't that the gist of their testimony?

Mr. Lockerman: It may be that they did say what amounts to something along that line, but—

The Court: And if they had had that information, one of them testified this, that if they had had this information, as an Alabama coach it would have been helpful, they thought it would have been helpful to them.

Mr. Lockerman: Let's go just a little bit further, though. They said that it would be helpful in what respect? It would have been helpful in the respect that Alabama would have used, say, less time in their practice because they would not have, say, gone through as many formations. But, one of them, specifically—I do not remember—I do not remember which one, but he said, even then, before completing the practice for that game they would have practiced all the formations that they had in their repertoire.

[fol. 483] Now, if all it is going to do is save a little time for the University of Alabama in some practice sessions, If that means that they are going to practice one hour instead of—I don't know whether they practice an hour or whether they practice a great deal, but the whole question is, does that amount to having fixed and rigged this ball game which the Post charges them with doing?

Now, just to be helpful, I think that two coaches talking together about football in general, and certainly that is the position of the Plaintiff in this case or would be the position of the Plaintiff in this case, that coaches do talk about football in general, and if you talk about football in general you are apt to get something helpful in that discussion. I would think that would be the reason they would talk about it.

The Court: My recollection, Coach Griffith said he didn't think—one of the coaches, maybe it wasn't Griffith, said he didn't think that coaches would discuss particular plays prior to a particular game.

Mr. Lockerman: But when you go through these notes, as has been done by Mr. Schroder on cross-examination, I think that when you sum it all up, that what each one of these coaches has, in effect, said when he got through with the cross-examination was that they really did not amount to anything of any vital importance.

The Court: Wouldn't that be a question for the Jury to pass on?

[fol. 484] Mr. Lockerman: Well, I would—I don't see how they could possibly ever—I mean, with all the technical information that was discussed, I don't see how they could ever arrive at it.

The Court: What are you asking this Court to do?

Mr. Lockerman: Your Honor, I undoubtedly should have started out with the statement at the conclusion of the Plaintiff's case in chief—I mean, the Defendant's case in chief, under the burden that they now have and under the Court's ruling that they have the burden of proof, that they have not shown by a preponderance of the evidence that they have put in, they have not carried the burden of proof that they had thrust upon them or placed upon them, and—

The Court: I will charge the Jury in regard to preponderance of the evidence, but if there is any evidence here, the matter would be left up to the Jury to decide which witnesses or what witnesses or whose witnesses—they determine the preponderance of the evidence, not the Court.

Mr. Lockerman: That would be—that would be true, Your Honor, if both sides put in, you know, evidence, under the preponderance of the evidence.

The Court: I expect to charge the Jury that as far as [fol. 485] proving the truth of the charges are concerned, the burden would be on the Defendant in this case under a plea of justification.

Mr. Lockerman: Well, that is our position, that they have not, by the evidence that they have put in, they have not proven the truth of the charges in any substantial way at all, and they have not carried that burden.

The Court: You would yet have to submit it to the Jury on the question of mitigation of damages.

Mr. Lockerman: Well, yes, sir; but our point is this, that as the case now stands that we are asking the Court to direct a verdict to the effect that insofar as their burden of proving the truth of the charges, we would have to go ahead, of course, with other phases of the case, but, I mean, under the burden that they had, they had to prove in their initial presentation of the case the truth of these charges. Therefore, if they don't carry that burden, then I think that the Court should—should direct that this has been a libel. They have not—

The Court: Oh, I am going to charge the Jury that this article is libelous per se; I expect to charge the Jury that the article itself is libelous per se. I think even the use of the word "corrupt—the Georgia Statutes vary a little on libel. Under the Georgia law a man in his profession, whether he is a doctor or a lawyer or farmer or coach or anything, who has been maligned, I think it is libelous [fol. 486] per se, and I will charge that the article is libelous per se.

Mr. Lockerman: My associate has just called my attention to this case of—no; it is not a case; it is Odgers' *Libel and Slander*, the fifth edition, Chapter 7 under the subject of justification. At Page 181 the author stated, "But the whole libel must be proved true. It will be no defense to the action to prove that a part is merely true. The defense must be pleaded to the words set out in the statement of claim and not to some other word of Defendant's own. Justification must be as broad as the charge and must justify the precise charge. If any material part be not proved true, the Plaintiff is entitled to damages in respect to some part."

The Court: I think the Defendant has the burden of proving that the sting of the libel was true, and if they fail to do that, then I think it is a matter for the Jury—for the Jury to determine whether or not they failed to prove the sting of the libel.

Mr. Lockerman: Your Honor, I did want to call your attention—

The Court: You go ahead, sir; I didn't mean to interrupt you.

Mr. Lockerman: The definition that is given in Webster's *New International Dictionary* of a "fixer" and certainly they have charged him with being a fixer—

[fol. 487] The Court: Yes, sir; I know—I am not exactly sure what "fixer" means, but I know what the word "corrupt" means, and I think the word "corrupt" would—I am going to charge the whole article was libelous per se.

Mr. Lockerman: Yes, sir.

The Court: Why doesn't that care for it all?

Mr. Lockerman: Certainly it will in Your Honor's charge to the Jury, but we felt that we should make a motion at this time—

The Court: Yes, sir.

Mr. Lockerman: —to the effect—a motion for a direction by the Court which, in effect,—this is a rather unusual situation, as Your Honor knows, because of the switch in the position of the parties.

The Court: Yes, sir.

Mr. Lockerman: But we do feel that the record should show that we filed a motion for a directed verdict—

[fol. 488] The Court: I want you to have every opportunity.

Mr. Lockerman: —on the point that the Defendant had not, under the evidence that it has shown, proven the truth under the burden that it had of the things that it has said against the Plaintiff in this article.

The Court: Mr. Lockerman, I think it would in error for this Court to withdraw that issue from the Jury.

Mr. Lockerman: Yes, sir.

The Court: I think you would be jeopardizing your whole case.

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HUGH FLEMMING having resumed the stand, testified further as follows:

Cross examination (continued).

By Mr. Schroder:

Q. Mr. Flemming, do have in your hand there a toll ticket representing a call from Cullman, Alabama, to Atlanta, Georgia, on September the 10th, 1962?

A. Yes, sir; I have.

Q. Would you please give the Reporter the exhibit number that has been given that one, I believe,—

A. It shows Exhibit 30.

Q. Thank you.

[fol. 489] A. Plaintiff's.

Q. Let me have a copy for opposing counsel. Could you interpret that for me, please, sir? You might let me have a copy too.

A. Yes, sir. This is a station call on September the 10th from Cullman, Alabama, to Atlanta, Georgia, to telephone number 874-1967. There is no name of the calling party.

Q. Does it indicate a charge card at the top?

A. Yes. It was billed on credit card 5434351 A-K 35.

Q. And that is—that, according to your information, is Coach Butts' credit card?

A. That is a credit card on that particular telephone number; I don't know whose it is.

Q. Do you have one on September the 11th, 1962, from Birmingham, Alabama, to Atlanta?

A. Yes, sir; I have.

Q. That one was placed at what time, sir?

Mr. Cody: Your Honor, may I interrupt this witness just a moment?

The Court: Yes, sir.

Mr. Cody: In the interest of time I am perfectly—I see he has a number of these toll tickets. I am perfectly willing for him to take them back and make the same type of

schedule that we have done in Athens and Tuscaloosa and Atlanta and Chicago, and list it, and I will agree that that is a correct summary of what those toll tickets show. We take his word for it. It can save a lot of time.

[fol. 490] Mr. Schroder: I agree with you, but—will you agree with me that the toll tickets I have now need no further explanation by any expert witness if I need to introduce them?

Mr. Cody: I will; I will agree to that.

Mr. Schroder: There is no need, then, to pursue this further. I don't need any study of it made.

FRANK GRAHAM, JR., called as a witness by the Plaintiff, after having first been duly sworn, testified by deposition as follows:

Cross examination.

By Mr. Schroder:

Q. State your full name, please, sir.

A. Frank Graham, Jr.

Q. And your address?

A. 201 Congress Street, Brooklyn 1.

Q. Your occupation, sir?

A. I am a writer.

Q. What type of writing do you specialize in, if any?

A. Chiefly sports.

Q. What is your age, Mr. Graham?

A. I am 38.

Mr. Schroder: Speak a little louder, please, sir.

By Mr. Schroder:

Q. How long have you been engaged in writing sports?
[fol. 491] A. I was a publicity man, publicity director of the Brooklyn Dodgers, for which I did a lot of writing from 1951 through 1955. Since then I have been chiefly a writer.

Q. Specializing in baseball or in general sports?

A. General sports. I was assistant managing editor of Sports Magazine, also, for two years.

Q. Where were you educated, Mr. Graham?

A. Columbia University.

Q. Did you major in journalism?

A. No, I majored in English.

Q. What year did you graduate?

A. 1950.

Q. Have you written a great deal on the game of football?

A. Not a great deal, no.

Q. Are you what one might call a football fan?

A. Yes, I have watched football ever since I was a child. My father was a sports writer and I started going to games with him, and I played a little in high school at Iona Prep.

Q. I-o-n-a?

A. Yes.

Q. Do you know Furman Bisher?

A. Yes, sir.

Q. How long have you known Furman Bisher?

A. I don't believe I ever met him face-to-face until some time in February, the end of February, of this year. When I was at Sport Magazine, also with the Dodgers, I talked to him on the phone several times, and I may have met him at a World Series, about 1954 or 1955.

Q. However, you don't recollect having met him face-to-face until February of 1963?

A. That's right.

[fol. 492] Q. Did you talk to him in 1963 prior to your meeting him face-to-face?

A. No, I didn't.

Q. Where did you meet him on this occasion?

A. I met him here in New York.

Q. What were the circumstances of the meeting?

A. I had just come back from Atlanta, and Furman Bisher was in town on some kind of speaking engagement, I believe, and he called the Post to say that he had a

story, and I had a call from Roger Kahn, senior editor here, and he said Furman Bisher was in town and he would like me to come in and meet him, talk with him.

Q. Do you recall the date on February that this occurred?

A. Well, it was the Monday after Washington's Birthday, I believe. Washington's Birthday was a Friday, I think.

Q. That would be—

A. About the 25th or 26th.

Q. About the 25th or 26th?

A. About that.

Q. Let me interrupt that thought for a moment and ask you, did you bring your notes that you used in writing the story?

A. Yes.

Q. Would you be able to give me the specific date better by consulting the notes, or would that date appear in the notes?

A. No, it would not appear in the notes.

Q. Had you, prior to that time—and we will assume that it was February 25th—been in touch with the Curtis Publishing Company about the story that Furman Bisher called the Post about?

A. Yes.

[fol. 493] Q. What was the story that Furman Bisher had that he wanted to consult the Post or you about?

A. He said it was a story about Georgia football.

Q. Did it turn out to be the story that you wrote in the Post in the issue of March 23rd?

A. It did.

Q. Did you talk to Furman Bisher on the occasion that he was in New York on February 24th or 25th?

A. I talked with him the evening of February 23rd and briefly on the telephone on the next day, which would be Tuesday.

Mr. Schroder: Well, there is a correction there. We understood that this is Monday after Washington's Birthday; I believe the witness said "the 23rd" when he meant "the 25th."

By Mr. Schroder:

Q. Where did you meet with Furman Bisher on the evening of February 25th?

A. At the Manhattan Hotel.

Q. Manhattan Hotel?

A. Yes.

Q. Is that where he was staying?

A. Yes, he and his wife were in town.

Q. Was that the first time that you recall in the year 1963 that you had been in communication with Mr. Bisher?

A. Yes.

Q. And I believe you said that he called you or did someone from the Post call you?

A. Furman called the Post and the Post arranged for me to meet him.

Q. Did you spend some time with Mr. Bisher at the Manhattan Hotel that evening?

[fol. 494] A. Yes, we spent an hour and a half.

Q. Did you meet in his room or down in some other room?

A. Downstairs, in the cocktail lounge.

Q. And you were with him and his wife for an hour and a half?

A. Yes, she came later. I was with Roger Kahn.

Q. Kahn went with you to see Bisher?

A. Yes.

Q. What, in general, did Mr. Bisher tell you at that meeting at the Manhattan Hotel?

A. He told me substantially what I had learned in Atlanta, much of the information which was in the affidavit which George Burnett signed for the Post.

Q. Did Mr. Bisher indicate to you the source of his information?

A. Yes. Apparently he got a good deal of it from Cook Barwick.

Q. Did Mr. Bisher subsequently do some work for you or the Post in connection with gathering information for your article?

A. Yes, he did.

Q. Was he employed at that time, that evening that he met with you?

A. Yes, that day. He may have been employed before I met—I don't know if there had been a firm understanding, but the agreement was that I would come and meet him and talk to him and tell him what I had heard and he, in turn, verified this information, or some of it. Then he was to—originally I was going back to Atlanta, and then it was decided—I think you will have to check with Mr. Kahn—then it was decided, so far as I know, because he would have more entree's to people in Atlanta, that he would complete the investigation down there. They would send me—he [fol. 495] would send me material from which I would complete my story.

Q. What was the pay by the Post or what was the agreement as to his compensation?

A. I don't know.

Q. That was not discussed in your presence?

A. No.

Q. As I understand your testimony, Mr. Graham, Mr. Bisher confirmed what you said you had already heard in Atlanta when you had been there on the previous date in communication with George Burnett?

A. Yes, he had heard much—some names, I believe, he was unfamiliar with, some questions he asked me, and then he said he would go back that week and he would get more information or talk to more people, et cetera.

Q. Do you remember what information it was that he had and which he discussed with you which you didn't have, by way of names or any facts?

A. That I didn't have?

Q. Yes, that he gave you.

A. No. He just gave me a general background. He talked to me of the background of the situation in Atlanta, the situation at the University, and identified some people for me more precisely, people whose—

Q. I understand you said that you mentioned some names to him with which he had not previously been familiar.

A. Yes, there were names like Milton Flack.

Q. He had not heard that name before?

A. He had heard the name, but he was a little vague on some of the details, how Flack fitted in et cetera. I would say substantially the information we had, he had, because there were only two affidavits in existence.

[fol. 496] Q. One which Burnett had given to you and the other one he had given to the—

A. University.

Q. Did he have that affidavit with him when he met with you?

A. No, no, he had no affidavit.

Q. When did your visit take place to Atlanta in connection with this story?

A. I flew down on a Wednesday evening, which was the 20th.

Q. What were the circumstances leading up to your trip to Atlanta?

A. I was called at home by Mr. Kahn, who said that the Post had an assignment for me, and would I come in and talk to Davis Thomas, the managing editor of the Post, on a Tuesday morning.

Q. Your call by Mr. Kahn took place when?

A. Monday of that week.

Q. That would have been what date?

A. That would have been the 18th.

Q. The 18th?

A. Yes.

Q. And Mr. Kahn told you that he had an assignment for you to do for the Post?

A. Mr. Thomas had an assignment for me. As I understood it, Mr. Thomas said that he had a story which involved sports and he asked Mr. Kahn to get a sports writer.

Q. Then you came into the Curtis Publishing Company's office the following day?

A. Tuesday.

Q. Tuesday?

A. Yes.

Q. And you talked with Mr. Kahn and Mr. Thomas?

A. Yes.

[fol. 497] Q. What was the substance of that conversation?

A. They said they had information about a man—they were not positive—a man or a boy, they didn't know who he was—whether a college student or an outside person—who had overheard a telephone conversation between Wally Butts and Bear Bryant, in which certain information was passed from Butts to Bryant, and they asked me to go down to Atlanta to meet an attorney in Atlanta who was coming in from Birmingham, Roderick Beddow, and I was to go to the Heart of Atlanta Motel, get there on Tuesday night, and on early Wednesday morning I would be called by Mr. Beddow.

Q. Mr. Beddow is the lawyer representing the Curtis Publishing Company in the libel suit pending against it in Birmingham?

A. That's right.

Q. And I believe Bear Bryant is the Plaintiff in that action and the Curtis Publishing Company, along with Furman Bisher, is the Defendant? Did you know that before?

A. I had read something in the paper about it and I heard more about that that Tuesday morning.

Q. That was when you had your meeting with Mr. Kahn and Mr. Thomas?

A. Yes.

Q. What did they say to you about the lawsuit pending in Birmingham against the Post and against Bisher?

A. They simply said that this firm in Birmingham was representing them in a suit, this suit, and that through this firm in Birmingham, this information had been sent to them.

Q. What else did they have to say about that lawsuit?
[fol. 498] A. That is all that I can recall.

Q. You say—

A. That there was a suit for \$500,000, that Bisher had written this story in the previous fall, I don't remember

the date, and they were being sued, and out of this—let's see—they were being sued by Mr. Bryant, and their lawyer, Roderick Beddow, had sent them this information and they wanted me to go down and see if there was a story for the Post.

My assignment was to go down and meet with Beddow to talk to this—to talk to the man who turned out to be George Burnett.

Q. You went to Atlanta on February 20th, I believe you said?

A. Yes.

Q. And you went to the Heart of Atlanta Motel?

A. Yes.

Q. You didn't see anyone, I assume, that evening in connection with this story?

A. No, I didn't. I didn't get there until about midnight.

Q. The following day you met with Mr. Beddow?

A. Yes. Mr. Beddow and an associate of his named Fred Boteger, B-o-t-e-g-e-r.

Q. B-o-t—

A. -e-g-e-r.

Q. Was he introduced to you as an associate lawyer?

A. As an associate.

Q. Do you know—

A. He wasn't a lawyer. He was a private investigator, I believe. But he was introduced as an associate.

Q. He was a private investigator and came over with Mr. Beddow from Birmingham to meet and discuss with you the story about this telephone call?

[fol. 499] A. Yes.

Q. What time on the morning of the 21st did Mr. Beddow get in touch with you?

A. I would say about between 9:30 and 10:00.

Q. Was he staying at the same motel?

A. No. He and Mr. Boteger had just arrived from Birmingham. They flew in that morning.

Q. He contacted you first by telephone?

A. Yes, he called me and I said that he was to go to the office of Pierre Howard,—

Q. And you—

A. (continuing) —in the Healy Building.

Q. And you later did go to Mr. Pierre Howard's office in the Healy Building?

A. Yes, I did.

Q. That was on February 21st?

A. That was on that morning, yes.

Q. Who was in Pierre Howard's office when you had your meeting there?

A. The three of us, Beddow, Boteger and myself, and Pierre Howard, and we were joined shortly after by Milton Flack.

Q. Was that the first time that you had met Milton Flack?

A. Yes.

Q. How long was Milton Flack in the office while you were there?

A. He arrived a few minutes after I got there, and he was there, I would say, all of the rest of the time that I was there. We had our—we ate lunch in the office. We sent down for sandwiches.

Q. What was the nature of the conversation that took place in Pierre Howard's office with Mr. Flack?

A. Pierre Howard and Milton Flack recounted the story that George Burnett had told them.

[fol. 500] Q. Howard and Flack were recounting the story that Burnett had told to them?

A. Yes, and then filling me in on some background on Georgia football and the situation there as they knew it. Some of the conversation was casual and some directly pertained to this matter.

Q. You got there you say around 10:00 o'clock in the morning?

A. Yes.

Q. And you remained there for the remainder of the day?

A. No, we were there until after lunch. We put in a call to George Burnett to get him to come—

Mr. Schroder: Just a moment; you read that wrong.

Mr. Lockerman: "No, we—"

Mr. Schroder: "They put in a call—"

By the Witness:

A. They put in a call to George Burnett to get him to come, and just about the time—just after Pierre Howard called Burnett—no, just before Howard called Burnett, Burnett had been called by Cook Barwick and had been asked to come to Barwick's office in Atlanta, I believe in the Federal Building, and there talked to Bernie Moore, who was the commissioner of the Southeastern conference.

Q. Let me get the sequence a little clearer in my mind. You arrived in Atlanta on the evening of February 20th; is that correct?

A. Yes.

Q. On February 21st, at 10:00 a.m., you went to the office of Pierre Howard, pursuant to instructions given you by [fol. 501] Attorney Beddow from Birmingham?

A. Yes.

Q. Around 10:00 a.m.?

A. Yes.

Q. At Pierre Howard's office that morning—

A. Yes.

Mr. Schroder: Cody, I am not going to read that part.

Mr. Cody: Skip it; it is okay.

Mr. Schroder: All right.

By Mr. Schroder:

Q. During that morning meeting attended by the people whose names I just listed, were you considered to be the representative of the Curtis Publishing Company?

A. Yes, I was.

Q. Did you discuss a price that Curtis would pay for the story?

A. I did. It was to be done through Pierre Howard acting as agent for Mr. Burnett.

Q. Did Milton Flack engage in the conversation that related to the purchase price of this story?

A. Yes, he did.

Q. Was there any negotiation or negotiating done with reference to the price or was it just fixed, and that was it?

A. No. I said the Post was willing to pay \$2,000 for it.

Q. What was the counter-offer?

[fol. 502] A. There was none, but both Milton Flack and Pierre Howard thought he should get more, especially if this were an exclusive story. So then I said I would—I was prepared to offer him \$2,000 just for George Burnett's affidavit in this case; that if the story appeared in print, was published and was a Post exclusive, then, in addition, he would get \$3,000 more, after the date of publication.

He was to get \$2,000 immediately, which I believe was wired by Davis Thomas after I told him it was all right to go ahead, and it was wired to Pierre Howard.

Q. Was that check made payable to Howard?

A. I believe it was to Howard. Now, I never—

Q. You never saw the check?

A. No.

Q. Was there any discussion as to a payment by Curtis by Pierre Howard?

A. No, none whatsoever.

Q. Was there any discussion as to any payment by Curtis by Milton Flack?

A. No.

Q. Do you know whether or not Curtis has paid Pierre Howard?

A. No, I don't believe they have. So far as I know. I have never heard. Later, I believe, and you will have to check this, I believe Milton Flack was paid \$500.

Q. Was that discussed at the meeting that you attended that morning?

A. No.

Q. On the 21st?

A. No.

Q. I believe you said at the time you were in Pierre [fol. 503] Howard's office on the 21st that Burnett was at Barwick's office?

A. He was to go there. Apparently he was in the suburbs of Atlanta on business and a call was left for him some time that morning, but he was out—

Q. A call was left for him?

A. For Burnett.

Q. Do you know where?

A. I don't know where.

Q. Do you know who made the call?

A. Pierre Howard.

Q. While you were there?

A. Yes. I believe he called the secretary and said, "See if you can get George Burnett," as I recall it. I am not sure.

Q. Was it made clear to you that this meeting was being done with the approval of George Burnett?

A. No. There was no—when I spoke to Milton Flack there was still some doubt as to whether he would—wanted to cooperate.

Q. Who, Burnett or Flack?

A. Burnett.

Q. Give me the substance of that conversation.

A. He said that he was very upset about this; George Burnett was very upset about this matter; that he had been worried about it for a long time, and the whole thing had been on his mind, and he was reluctant to get into it, even from the start. And he said when the thing had first been brought up, he had been brought to Johnny Griffith, the coach at Georgia, and he had asked Griffith to try to leave him out of it, which, of course, was impossible once Burnett reported the story.

Q. This is Flack's story to you?

A. Yes.

[fol. 504] Mr. Schroder: Look's like we are getting into hearsay. I didn't notice it. Flack was telling him something, but—

Mr. Cody: What page.

The Court: Sir?

Mr. Schroder: I don't know; some of it—

Mr. Cody: Okay.

Mr. Schroder: I haven't started skipping yet. Some of this I am getting into hearsay.

The Court: If you can agree to it, it is all right with me.

Mr. Schroder: It would not be proper to read it.

Mr. Schroder: The next questions seem to be all right.

By Mr. Schroder:

Q. Go ahead.

A. And so then Mr. Beddow said, well, the best thing was to get Mr. Burnett in here and see what he wants to do.

Q. So that insofar as you knew, the story really wasn't [fol. 505] available when you went to Atlanta?

A. I had thought it was, but when I got in there there apparently was some doubt about it.

Q. Later that afternoon or later that day you say Burnett came to Pierre Howard's office—no?

A. No.

Q. Excuse me.

A. No. We had lunch there, and we just sat around for a while and then finally we understood that he was in—George Burnett was in talking to Cook Barwick and Bernie Moore, and we decided to go back to the Heart of Atlanta Motel, and Boteger and Beddow and I went back.

We waited a while and then Milton Flack, I think, had some business or somebody to see so he left for a while and then he came in, and then later in the afternoon, I believe it was after three o'clock, when Pierre Howard and George Burnett came over.

Howard—Burnett had apparently come from Cook Barwick's office, picked up Pierre Howard.

Q. Then he came on out to the motel?

A. Yes.

Q. Originally Flack had gone to the motel when you left Howard's office, with you, and then he left—

A. No. Flack didn't come originally. I think he had something to do.

Q. But then he did come to the hotel?

A. Then he arrived before—

Q. Before Burnett and Howard?

A. Yes.

Q. What was the nature of the conversation that took place in the motel when Howard and Burnett arrived?

A. We were introduced to him and he started off by telling about the meeting which had taken place that day [fol. 506] in Cook Barwick's office. He seemed to be upset about what had happened to him there.

Mr. Schroder: Just a minute, Mr. Witness; getting back into hearsay now. I am reading on Page 24 now, Mr. Cody.

Mr. Cody: What line are you on?

Mr. Schroder: I am on line 10 where the paragraph begins there where it says, "He said," and it goes into some conversation; I am going from there, Mr. Cody, over to the top of Page 26.

By Mr. Schroder:

Q. Now, when Burnett and Howard came to the motel room there in Atlanta where you were, this was what was related to you by Burnett and Howard that you have just testified to?

A. Yes. Burnett did almost all the talking once he arrived in the room.

Q. Did you, as representative of the Curtis Publishing Company, come to an agreement with Burnett as to the publication of the story and the price that Curtis would pay him?

A. No.

Q. That had already been determined in Howards office?

A. I had talked with Howard about the Post offer before and then it was agreed that I would see Howard next day in his office after I had talked to Burnett.

[fol. 507] Q. Was the amount of money to be paid to Burnett discussed with Burnett?

A. No.

Q. Did he know or indicate to you that he knew?

A. It was never mentioned between us. I handled all that with Howard.

Q. You assumed that the client knew what the lawyer was negotiating?

A. I assumed, but I didn't know.

Q. You did take an affidavit from Burnett?

A. That was the following day.

Q. The following day?

A. Yes. He went through the whole story. That was this afternoon, in—Thursday afternoon, in the Heart of Atlanta Motel.

Q. Who was—

A. When he got through talking, we had a drink and we had to wait a while because Mr. Beddow and Mr. Boteger were going back to Birmingham on the plane and they were waiting for their plane and we had a drink and Mr. Howard was going somewhere and then I stayed with—the five of us left and then finally Mr. Boteger and Mr. Beddow left and I said I would call them in the morning in Birmingham.

Q. For what purpose?

A. To talk to them about the whole situation, what he had heard. Because we were not—we were never alone after we met Mr. Burnett and I wanted to get their reaction, et cetera.

We stayed—well, it was after dark when they left for the airport, and afterwards I went out to dinner with Flack and Burnett. They took me to a place in Atlanta to eat.

[fol. 508] Q. When was it that you and Burnett were alone? Was it that day or the following day?

A. It was the following day. Well, I am just trying to think—yes, I was alone with Burnett the following morning. On Friday morning, which was Washington's Birthday, I went to—that was the 22nd—I went to Pierre Howard's office.

I got there before Burnett, and then I talked to Howard and Howard—Howard and I made the final arrangements on the story, and I said that money would be wired by the Post to Pierre Howard.

Q. Was Burnett there during that conversation?

A. No. Burnett came in and Howard said, "Now, you will want to talk to him alone, to go over any questions that you have in your mind."

So we went into another office in the back where the two of us talked alone for a while.

When that was over I went out and Pierre Howard sent in a girl who was apparently a notary public, and I left for lunch, and he said while I was gone—while I was gone he and the girl and Burnett would prepare his affidavit, and she took down his story, and I was to come back later in the afternoon and pick up the affidavit.

Mr. Schröder: Who is following the deposition?

Mr. Cody: Give us the page.

Mr. Schroder: Page 29 at the top is hearsay and I am skipping it. That is the first question, on down to line 23. I am beginning reading on line 24 on Page 29.

[fol. 509] By Mr. Schroder:

Q. Now, when you first met with Messrs. Kahn and Thomas in New York, before you went to Atlanta, and they pointed out to you the purpose for them calling you, did you make notes during that conversation?

A. I took a couple of notes, just a couple of names, the name of the motel where I was to go, et cetera.

Q. Did you take any notes at that time having to do with the substance of the story?

A. No, I didn't.

Q. When you met with the people that you said you met with in Pierre Howard's office the first time, did you make notes as to what was said in that conversation?

A. I took very few notes then. I may have written down an unfamiliar name. I would say most of the notes that I

took were the next day when I was alone with George Burnett.

Mr. Schroder: The next one, Mr. Cody, is line 16 on Page 30; the question and answer both would be hearsay. I am reading beginning at line 24 at the bottom of the page. I am just skipping one question and one answer.

By Mr. Schroder:

Q. You didn't make any notes to amount to anything during that conversation?

A. No.

Q. Or what was said—

A. No, I wanted to get it from him, most of it.

Q. When they were filling you in on Mr. Burnett's background at that time did they indicate to you—

A. I did—I will say this: I did take notes on some of [fol. 510] the names of people. I took notes on some of the names that he had overheard, Burnett had overheard mentioned during this telephone conversation.

Q. Did—when Flack and Howard were telling you about Burnett's background, did they tell you about the matter of the bad checks that he had written?

A. Yes.

Q. You knew that then before you heard it from Burnett?

A. Yes.

Q. Did they tell you how many there had been?

A. Pierre Howard said two.

Q. How many did Flack say?

A. He said two.

Q. You knew that, then, before you met Burnett?

A. Yes.

Q. When Burnett subsequently came to the motel room that afternoon with Pierre Howard, and you had a general discussion among all of you about the meeting in Barwick's office and I suppose—

A. Yes, Burnett did almost all the talking then.

Q. Did you make notes of what was said in the conversation?

A. Very few. I remember once I interrupted him to write down the number that he had dialed that day, when he was hooked into this long-distance call.

It was Jackson number, I believe, which I used in the story, and I had him repeat that.

Q. On the occasion of Burnett's visit to the motel room on the afternoon of February 21st, did he have these so-called notes with him that he said he took?

A. No, he never had the notes, at any time during the—we were never able to get the notes at any time during [fol. 511] the entire preparation of the story.

He had thought that he could—let's see—he said that he was going to try to get them on Friday. I called Pierre Howard—I went to see Pierre Howard on Friday morning, the 22nd, and they still didn't have them and they were trying to get these notes and they were not able to get in touch with Cook Barwick and Barwick wasn't coming into his office that day, because it was Washington's Birthday, and I said that I would like to get the notes, if possible, to check dates and a couple of names that were mentioned, et cetera, and see everything that I could on this, and they promised to keep trying.

Howard said if he didn't get them before I left Atlanta, that he would send them, rush them to me by air, the first part of the following week.

Q. Were they rushed to you by air?

A. I never got them.

Q. You have never seen the notes yet?

A. No.

Q. Then you wrote the story without benefit of having seen the notes?

A. That's right. I had to depend on Burnett's recollection, the recollection of Flack and Howard from what Burnett had told them about the notes.

Q. Did anyone at any time indicate to you that anyone else had overheard the conversation that Burnett said he overheard?

A. When I was here in New York, I had been told that there were two—possibly two people there, but we didn't know how many had overheard the conversation. There was a man named Carmichael mentioned.

[fol. 512] Q. That he was there when the call was intercepted?

A. Yes.

Q. Did you—

A. When I spoke to Burnett and Flack and Howard about it, they said that Carmichael was a friend of Wally Butts and didn't want anything to do with this case, didn't want to be brought into it.

Q. Did you get in touch with this Carmichael?

A. No. They said that he positively didn't want to talk.

Q. Did you interview anyone other than Burnett and Flack and Howard?

A. No.

Q. Did you, after you came back to New York, ever interview anyone in connection with this story, other than Furman Bisher?

A. No. When I came in on Monday then it was decided that Furman Bisher would complete the interviewing on the story, that he would have a better—he knew most of these people and would have a better chance to get us the information than I would have.

Q. And you came back to New York you say from Atlanta or did you say, on Monday?

A. No. I came back on Saturday. I came into the Post office on Monday morning but I flew back on Saturday afternoon. On Saturday morning—I had stayed over in the hopes of getting these notes. They were never released by the university to us.

Let's see. On Saturday morning, I called Pierre Howard at his home, and there was still no chance to get the notes. I called Milton Flack and he and George Burnett said they would drive me to the airport that afternoon.

[fol. 513] So that morning I went to the public library in Atlanta and I looked over—I went through all the news-

papers for a couple of weeks before the Georgia-Alabama opening game last year and for a few days afterwards.

Q. Did you make notes of what the newspaper articles said?

A. Yes.

Q. What was the substance of the articles in the newspapers that you read prior to the game and after?

A. There was some—I am trying to think—the substance of it was that Georgia was hopeful. Johnny Griffith said that they knew they were playing a strong club and they had a lot of hope.

They had some good, young players, a lot of sophomores on the team that he had high hopes for, but that Alabama was favored by from 14 to 17 points. And Bear Bryant said he expected a very close game.

Q. Did you use any of those articles in your publication of the story?

A. Yes, I did, yes.

Q. Were the names of the Georgia football players prominently mentioned in those articles?

A. Some were. I went through and copied down the names of all their leading players who were mentioned at any time during the two weeks before the game, for spelling, et cetera, and then their position.

Q. Were the names Babb and Rissmiller mentioned prominently in the newspapers—

A. Yes.

Q. (continuing) —prior to—

A. Yes.

Q. Ever since practice started on September 1st?

A. Well, their names were mentioned. I copied them [fol. 514] down. I don't remember how many times. When I would see a player who would play a prominent part in the Georgia team, I wrote down his name with his position.

Q. Were the names Rissmiller, Babb, Rakestraw, Blackburn—

A. I don't remember Blackburn—

Q. Woodward—

A. Yes, Don Blackburn.

Q. Those names were mentioned prominently—

A. I don't remember Blackburn so much, but apparently he was mentioned, because I have it.

Q. When did you first hear Blackburn's name?

A. I guess there, because—

Q. You mean in the newspaper?

A. In the newspaper.

Q. What names were mentioned to you by either Howard, Flack or Burnett when they were relating what Burnett was supposed to have overheard?

A. Babb and Rissmiller and Rakestraw.

Q. Now when you came on back—

Mr. Schroder: Evidently it was withdrawn.

By Mr. Schroder:

Q. Flack and Carmichael took you to the airport?

Mr. Lockerman: I think it says "Flack and Burnett".

Mr. Schroder: The question—line 14.

[fol. 515] Mr. Lockerman: Oh, yes, yes.

By the Witness:

A. No.

Q. Flack and Burnett took you to the airport?

A. Yes.

Q. Was the forthcoming story discussed going out to the airport by the three of you?

Mr. Schroder: Well that is again—that is on line 21, Cody, on Page 37.

Mr. Cody: I think—go ahead; that is all right.

Mr. Schroder: Sir?

Mr. Cody: Go ahead.

Mr. Schroder: I am looking now at line 21 on Page 37 where it says "We were talking"; that is hearsay, of course, which would also apply to Page 38—May I address counsel just a minute on some of this?

The Court: Yes, sir.

Mr. Schroder: Mr. Cody, I am going on over to Page 40, if it suits your convenience and start on line 14.

[fol. 516] Mr. Cody: Page 40?

Mr. Schroder: Yes, sir.

By Mr. Schroder:

Q. Now, when Bisher came to New York on that Monday, I believe you testified earlier that he was the one that got in touch with the Post?

A. That's right, sir.

Q. And he offered his services to the Post?

A. Yes.

Q. They accepted his services?

A. I don't know on what basis what was done, whether he himself wanted to write the story. He didn't know at any time that I was in Atlanta.

Q. Well, did he indicate to you or to the Post officials in your presence the reason for his getting in touch with the Post officials when he came to New York on that Monday?

A. Yes he said that he had what he—I don't have the exact words, but something about having a very important story about Georgia football.

Q. Obviously, he didn't know up to that time that the Post already had the story?

A. Apparently not.

Q. Did he indicate to Mr. Kahn in your presence when you all met at the Manhattan Hotel, that he was still interested in writing the story or selling the story or giving the story to the Post?

A. Well, apparently he and—you see, I don't know all the details—apparently he and Roger Kahn—Mr. Kahn apparently told him before we met that I had been in Atlanta, so that the Post had the story.

[fol. 517] Q. So that when you met with him he already knew that the Post had the story?

A. Yes.

Q. And then he assumed the role of assisting you?

A. Yes.

Q. By making field investigations or whatever you writers call them?

A. Yes.

Q. In Georgia for the Post?

A. Yes.

Q. Have you seen Furman Bisher since that meeting in the Manhattan Hotel?

A. No.

Q. Have you talked with him over the phone or communicated with him in any other manner?

A. Yes, he called me later in the week.

Q. From Atlanta?

A. Yes.

Q. Later on in the week of the Monday that you met here?

A. Yes.

Q. What was the substance of—

Mr. Schroder: Well, I guess it would be all right to read that part; it is in the article.

Mr. Cody: Yes.

By Mr. Schroder:

Q. What was the substance of that conversation?

A. He told me that he had talked to people at the University of Georgia. He had been—he gave me some quotes from a couple of football players, from the trainer, Sam [fol. 518] Richwine, and the coach, Johnny Griffith.

Q. Is that the last time that you have had any communication with Mr. Bisher or have you had subsequent conversation with him?

A. That was the last time.

Q. When the story had been more or less—

A. He was,—I believe in between, I believe he was in touch with Mr. Kahn.

Q. Giving Mr. Kahn additional information about the story?

A. I don't know. He talked to him I know because Roger Kahn told me that he would call me on Friday.

Q. I am going to jump ahead just a moment. When the story was almost completed, did you then or at any other time send it to Mr. Bisher for corrections or for whatever he wanted to do with it?

A. I sent him a copy of the story, the following week, which would be a week after I saw him. The week after that Monday that I saw him at the Manhattan Hotel.

Q. That would be the first week in March, I assume?

A. Yes.

Q. You sent Mr. Bisher a—

A. I sent him a copy of my story, as I had written it for the Post, which he was to have for his files whenever the story was to be written in Atlanta, for the newspapers.

Q. Did he make any corrections?

A. No.

Q. Or suggestions?

A. No.

Q. After the story had been completed?

A. No.

[fol. 519] Q. Had you asked him to make any corrections or suggestions if any occurred to him before the story was published?

A. No, I sent the story to him, I say that week, and I have not heard from him again.

Q. Mr. Bisher then had the story in final form during the first week in March which was approximately two weeks before it hit the newsstands?

A. Yes.

Q. Now, Mr. Graham, will you kindly refer to your notes, because I want to ask you some questions about the article itself.

A. Yes.

Q. Mr. Graham—

Mr. Schroder: May I address counsel, please?

The Court: Yes, sir.

Mr. Schroder: Please look ahead so if there is any part you want to object to.

Mr. Cody: Okay.

By Mr. Schroder:

Q. Mr. Graham, I am looking at Page 80 of the March 23rd issue of the Saturday Evening Post. The title of the story is "The Story of a College Football Fix." Below that in smaller letters is the following: "A Shocking Report of How Wally Butts and 'Bear' Bryant Rigged a Game Last [fol. 520] Fall." And below that is "By Frank Graham Jr."

Now, is that language which I just read, is that yours or is that someone else's?

A. That was the editor's.

Q. You had no title on your story?

A. I think I just put "The George Burnett Story," or—I believe that was it.

Q. Now, looking again at Page 80, there is an insert in white that read:

"Not since the Chicago White Sox threw the 1919 World Series . . ." and there is no need for me to quote the full quotation there; and ends: "For now we can only be appalled," and the concluding two words are: "The Editors." Did you have anything to do with the preparation of that insert?

A. No.

Q. The first time you saw that, I assume, then, is when the magazine hit the stands?

A. I saw it in print, but it was before the magazine was—

Q. What you writers call that?

A. Well, it was on a sheet which had been marked up, ready to go to the printer.

Q. Now the photograph on Page 80 and the three photographs on Page 81—well, I will say on the next page, because mine does not show a number—

A. Yes, it is 81.

Q. (continuing) —and the two photographs on Page 82, and the one photograph on Page 83, do you know the source of those photographs?

A. No, I don't.

Q. Were they sent to you?

A. No.

Q. You don't know, then, where Curtis got them?

[fol. 521] A. No, I don't.

Q. Did you finish them to them?

A. I believe on this one, the one of George Burnett, on Page 80, a photographer—

Q. 81, is it not?

A. 81, pardon me. A photographer on assignment for the Post took that picture. I don't know his name.

Q. While you were in Atlanta?

A. No.

Q. Or at some subsequent date?

A. At some subsequent date.

Q. You don't know, then, where the Post got the other pictures that I have referred to?

A. No, I don't.

Q. You did not furnish them?

A. No.

Q. On Page 81, the first three paragraphs of the article, what was the source of your information that you put forth or set forth in them?

A. George Burnett.

Q. Do you have the notes?

A. No. Much of this I took from his affidavit, and, for instance, I did write down the number. Much of the story, of course, was taken directly from the affidavit which he signed.

Q. The fourth paragraph, beginning with—beginning with "Like most males over the age of four . . ." and ending with ". . . football history," what was your source of that information?

A. The first two sentences were from George Burnett himself, and—

Q. Did he, for example—you said the first two sentences were from George Burnett.

Did he refer to the two coaches as being "collossi"?
[fol. 522] A. No, that was my word. He mentioned two of the biggest names in Southern football, something like that.

Q. Is there any other language in that paragraph which is your own and not George Burnett's?

A. I would say the way it was phrased, like most males over the age of four in Atlanta.

Q. Burnett did tell you, then, that he was a football fan?

A. Yes, he said he had always been interested in football. He told me that he had played football in college—in high school in Texas.

Q. Did he indicate to you that he was interested in football in the State of Georgia?

A. Yes, he said, like everybody else, he was interested in the games, knew these people. I had known Wally Butts from afar. I had only met him once. But he was interested in these people.

Q. Did he indicate to you familiarity with the players' names?

A. No, no, not especially. We were talking about it at one time and he said it was a young team. But he was not familiar with all the names.

Q. Did he indicate to you that he had seen the University of Georgia play any football games the previous season, being 1961?

A. No, he didn't say.

Q. Did you ask him?

A. No.

Q. The next paragraph beginning "After a brief wait . . ." and the next two sentences after that paragraph, or the next three sentences after that paragraph, which include quotations, they were taken by you from the affidavit?

A. Yes.

[fol. 523] Q. Not from any notes that you had?

A. It may have been partly from the notes. It was partly from the notes and partly from the affidavit.

Q. Let's move on to the next paragraph, which I shall read:

"As Burnett listened, Butts began to give Bryant detailed information about the plays and formations Georgia would use in its opening game eight days later. Georgia's opponent was to be Alabama." Now, what detailed information did you have in mind when you wrote that particular language?

A. What he had told me. He said: "Whereupon, Wally Butts proceeded to give detailed information pertaining to the University of Georgia's offense and defense to be used in the Alabama-Georgia game the following week."

Q. Did he tell you what information he had when he used that language?

A. He said: "At regular intervals Bear Bryant would ask Wally Butts certain questions pertaining to defensive and offensive maneuvers. Wally Butts would either ask him in detail or—

Mr. Cody: "Answer him".

By the Witness:

A. Wally Butts would either answer him in detail or would say, 'I don't know about that, I will have to find out.'"

Q. Go back—excuse me. I thought that you were through. Are you reading from your notes?

A. No, from the affidavit.

Q. Did Burnett at any time tell you the particulars of the questions which he said that Coach Bryant asked Coach Butts?

[fol. 524] A. He said here, for instance: "A question in particular that Bear Bryant asked was, 'How about quick kicks?' and then Wally Butts answered by saying, 'Don't

worry about quick kicks, they haven't anyone who can do it."

Q. Let's go back a moment, where you were reading: "... Wally Butts proceeded to give detailed information pertaining to the University of Georgia's offense and defense...." Did he give you any of the detailed information which he said he heard Wally Butts giving to Coach Bryant?

A. No, he said that he would have to have his notes to refresh his memory.

Q. So that you used that language just based upon what he said in his affidavit, without knowing exactly what information he was talking about?

A. That, and such things as he also told him that Woodward committed himself fast on pass defense, and he said that he would have to get the notes to refresh his memory on it.

Q. Now, we have in that same sentence the language: "... to be used in the Alabama-Georgia game the following week." What is the source of the information there? Did he tell you that they said this was what was going to be used in the game or how did he indicate to you—

A. He said they were talking about the game coming up which was in eight days, as he said in here, pertaining to the University of Georgia's offense and defense to be used in the Georgia-Alabama game the following week.

Q. Did he tell you that was his language or that is what they said was going to be used in the game, or did he tell you anything about what it was?

A. This was his language.

[fol. 525] Q. All you have is what is in this affidavit?

A. Yes.

Q. Do you have anything in your notes indicating that there was anything said between the two coaches about what was to be done or what was to be used in the upcoming game?

A. No.

Mr. Schroder: I don't know what that means.

By Mr. Schroder:

Q. The next language in the affidavit is: "At regular intervals Bear Bryant would ask Wally Butts certain questions pertaining to defensive and offensive maneuvers." Did Burnett tell you what he meant when he used the language "regular intervals"?

A. He just said that Bryant would ask him a question and he said that he was struck by the tone in which Butts answered these questions, that he seemed to be answering them reluctantly, to him—

Q. That is not my question, Mr. Graham. Did Burnett tell you what he was basing the use of the word "regular" on or did you just take it from his affidavit?

A. I took it from his affidavit.

Q. Did Burnett tell you what any of the questions, certain questions that Bryant asked Butts, pertaining to defensive and offensive maneuvers, were?

A. No. Except for instance about quick kicks.

Q. Other than what is set forth in this affidavit there was no discussion as to the substance of the conversation?

A. No, just that he was—couldn't remember anything definite about it, he said, without his notes. He could re-[fol. 526] call some of the names, but—

Q. Now, returning to the article in the magazine, about half way down the first column, there is a paragraph which reads: "Butts outlined Georgia's offensive plays for Bryant and told him how Georgia planned to defend against Alabama's attack."

Mr. Schroder: That being a quotation from the article.

By Mr. Schroder:

Q. Did Burnett furnish you with any details as to what offensive plays were discussed?

A. No. He just said that there was talk about this in which Butts mentioned specific things, but which he could not recall.

Q. So that—

A. What they were, numbers of plays or—

Q. So that when you wrote your articles, you just took it from the affidavit?

A. Yes, and from my questioning of him.

Q. Sir?

A. From the affidavit and from my questioning of Burnett.

Q. Read to me from your notes, please, sir, what you used when you wrote the language which I have just quoted.

A. He said that—he said—I asked him if there were any specific things that he could try to remember, and he said they discussed certain formations which he could not recall the details of, which Georgia would use inside the ten-yard line.

Q. And you don't know or he didn't tell you what he meant by that language?

A. No.

[fol. 527] Q. Skipping a sentence in that same paragraph, you have written:

"Occasionally Bryant asked Butts about specific offensive or defensive maneuvers. . . ." Did Burnett tell you what he meant when he was conveying that information to you?

A. Well, it was—for instance, certain things like quick kicks, which was one thing that stuck in his mind, that Bryant was trying to find out at certain times would they use a quick kick, could they be expected to look out for a quick kick in certain instances, and Butts said: "Don't worry about them, they haven't got anyone that can do it."

Q. What do you have in your notes pertaining to that sentence that I have just read?

A. I just have—I asked him about that and he didn't elaborate. There was nothing more for me to add, so I just said, "No quick kickers," and referred back to the affidavit.

* * * * *

PAUL WILLIAM BRYANT called as a witness by the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. State your full name, please, sir.

A. Paul William Bryant.

Q. What is your occupation, Mr. Bryant?

A. Football coach, Director of Athletics, University of Alabama.

[fol. 528] Q. How long have you been in the coaching profession?

A. Well, since I graduated from college, since 1936.

Q. Where, briefly, have you coached other than at the University of Alabama?

A. I was assistant coach at Vanderbilt University.

Q. Speak up so they can hear you.

A. I was assistant coach at Vanderbilt University. I was coach at the University of Maryland, the University of Kentucky, Texas A & M, and now at Alabama.

Q. At the last four places or institutions that you related, were you the head coach at Maryland, the head coach at Kentucky, the head coach at Texas A & M, and at Alabama?

A. Yes, sir.

Q. How long have you been the head coach at the University of Alabama?

A. We are starting my sixth year, sir.

Q. Mr. Bryant, the Saturday Evening Post published an article in its March 23rd, 1963 issue entitled "The Story of a College Football Fix", you are, of course, familiar with that article.

A. Yes, sir.

Q. In that article it is reported that on September the 13th, 1962, Coach Wallace Butts, athletic director at the time of the University of Georgia, initiated a telephone call to you in which it is stated in the article certain informa-

tion relating to the University of Georgia football formations, football plays, and defenses which they proposed to use in the forthcoming game between his school and your school were transmitted by him to you. You are familiar with that general statement as to what is in that article? [fol. 529] A. Yes, sir.

Q. Do you have any recollection, and if you do have a recollection of that telephone call, of the substance of what was said and as I said, if you do, would you please relate it to the Court and Jury?

A. Sir, I don't know whether he made the call or not; I don't remember. According to the records of the telephone company which I have seen, of course, the call was made.

Q. Do you have any recollection as to what was said in that conversation?

A. Specifically; no, sir.

Q. Do you—let me put it this way. Have you had other telephone conversations with Coach Wallace Butts?

A. Yes, sir.

Q. Have you had numerous conversations with him?

A. Yes, sir.

Q. With reference to other coaches, not only in the Southeastern Conference, but in other areas of the country have you had conversations over the telephone with those people?

A. Yes, sir.

Q. It is also related or set forth in the article that on Sunday, September 16, 1962, you and Coach Wallace Butts had another telephone conversation, which, I believe the Post states, was initiated by you. You are familiar with that general statement as it appears in the Post?

A. I am familiar with it, but I do not remember whether or not I made the call, but according to the telephone company's records, again, the call was made.

Q. All right, sir. Coach Bryant, will you please state to [fol. 530] the Court and Jury whether in any conversation you had with Coach Butts at any time he conveyed to you any information—

Mr. Cody: Your Honor, I—

The Court: What is your objection, Mr. Cody?

Mr. Cody: Mr. Schroder is an expert on leading questions, and I want to object.

The Court: I think both of you have been.

Mr. Cody: I have no objection to him asking the witness to relate the substance of any telephone conversation he has overheard with Coach Butts, but I don't—I want to object to leading questions.

The Court: I don't know that question was leading. Read the question back, Mr. Reporter.

(Whereupon the question was read aloud by the Reporter.)

The Court: I don't know what the question—will you finish the question.

[fol. 531] By Mr. Schroder:

Q. —relating to the plays, formations, or defenses to be used by Georgia, the University of Georgia—

Mr. Cody: Before you answer—

The Court: Don't answer, Coach Bryant.

Mr. Cody: I want to renew my objection.

The Court: Let him finish the question. Have you finished it, Mr. Schroder?

Mr. Schroder: No, sir; I haven't.

By Mr. Schroder:

Q. —so far do you understand what I have asked you up to now?

A. I would like to have it again, please, sir.

Mr. Schroder: I don't know that I can restate it exactly.

(Whereupon the question was read aloud by the Reporter.)

By Mr. Schroder:

Q. —in a forthcoming game with the University of Alabama?

[fol. 532] Mr. Schroder: Don't answer it; there is an objection.

The Court: All right, sir, Mr. Cody. Did you object to it?

Mr. Cody: As leading; yes.

The Court: I overrule the objection.

By Mr. Schroder:

Q. You understand the question now, sir?

A. Yes, sir.

Q. What is your answer?

A. Absolutely not, and I had had, I wouldn't have taken it, because he is for Georgia and I am for Alabama.

Q. What do you mean by—I don't understand the meaning of your answer. I understand you said absolutely not, but I didn't get the next thing you said.

A. Well, if he would give me something on the University of Georgia, well, then, the first thing I would think they weren't going to use it, because he is for Georgia and I am trying to beat them; I am for Alabama.

Q. All right, sir. It has been testified here by witnesses that in the telephone conversation of September the 13th, 1962, a record of which was supposed to have been made by one George Burnett, a discussion of certain formations to be used by the University of Georgia was had. In order that you might know what it is that I am addressing myself to, I will attempt to demonstrate it by use of this blackboard [fol. 533] or greenboard. Can you make anything out of, first of all, the formation on the other half of the board? If you can't see it, I will move it closer to you.

A. That is what we refer to as a slot formation.

Q. All right. Can you make anything out of the formation on the lower part of the board?

A. That is also a slot formation with a weak side end spread out.

Q. I want to direct a few questions to the formations on the upper half of the board described you as a slot formation. I want to ask you, Coach Bryant, is that what is known in the trade—when I say “the trade” I mean the college football trade—as a normal slot formation?

A. Yes, sir. The terminology differs in different places, but I think most anyone would refer to that as a normal slot formation.

Q. And when you use the word “normal” in describing that slot formation, that would include the split end being out three yards from the tackle?

A. Normally three yards from the tackle to open up the running lane.

Q. In the University of Georgia spring football game in 1962, which of course, is open to the public as all spring games are, did the University of Alabama send any scouts to Athens, along with other universities that Georgia was going to play, to scout, to see what the University of Georgia had?

A. We certainly did.

Q. Did the University of Georgia similarly send its scouts to Birmingham—to Tuscaloosa at the University of Alabama spring game?

A. Yes, sir.

Q. In 1962?

A. Yes, sir; I saw a couple of them myself.

[fol. 534] Q. The individuals that do the scouting for the various universities return from the game that they are scouting and prepare what is known as what?

A. A scouting report.

Q. Are you familiar with the scouting report prepared for the University of Alabama covering the spring game of the University of Georgia in the spring of 1962?

A. Sir, I am not entirely familiar with it now because that was our opening game, and I have studied many since then, but I am somewhat familiar with it.

Q. Was the formation on the upper half of the board which you have described as a normal slot used by the University of Georgia in its spring game of 1962?

A. According to our report; yes, sir; a hundred and nine times.

Q. Sir?

A. According to our report, a hundred and nine times.

The Marshal: Let's have order, please.

By Mr. Schroder:

Q. I will return to a discussion of that for a moment, but let me drop to the formation at the bottom of the board which, as you described it, is a slot, a normal slot right with the left end out fifteen yards. Did the University of Georgia employ that formation in its spring game of 1962?

A. Sir, I don't believe so. I could be wrong; I don't believe so, but they had used that formation, I think, the year before a few times.

[fol. 535] Q. Now, let's move forward to the fall of 1962. Football practice cannot begin before September 1st?

A. Yes, sir.

Q. The University of Alabama, I assume, did begin its fall practice on September 1, 1962, as did the other universities in the Southeastern Conference?

A. Yes, sir.

Q. What is the function of you, as head coach, and that of the assistant coaches during that period of September—from September 1st until the first game which was September the 22nd with reference to making plans, coaching, training, or whatever terminology should be used?

A. Well, to begin with, sir, we plan early more for conditioning, physical conditioning, and as the game approaches, well, then, we begin going over—well, before that, we go over plans that we use from year to year; in other words, our basic defenses, our basic offenses that we think we do fairly well with, and then as the game approaches we go into our game plans.

Q. When you use the word "game plans", do you mean to include that both your offensive and defensive formations?

A. Yes, sir.

Q. Would you please relate to the Court and Jury, Coach Bryant, what you trained and coached your boys with respect to defensive formation to be expecting when they played the University of Georgia on September 22, 1962?

A. You want me—well, actually—

The Court: Does he want to go down to the board?

[fol. 536] The Witness: That is all right, Your Honor.

Mr. Schroder: Maybe you'd better use the board.

By Mr. Schroder:

Q. Go ahead and talk if you want to.

A. Basically speaking we felt like the University of Georgia had Tennessee tendencies and the University of Alabama, because they had coaches from the University of Tennessee and from the University of Alabama which over the years have played defense very well. Bob Ford was one of our coaches that went over with them the year before.

Q. We over with who?

A. Georgia. And we haven't played defensive too poorly. We felt like they would have some of our tendencies, so, basically speaking—I will put the football there in the center—basically speaking—and this is the important thing, we thought, defensively that they would be in a three-deep. Certain things you can do with a three-deep. Certain things you can't do.

Q. When you say "three-deep", please make it in layman's language.

A. Three-deep would be, you have two halfbacks and a safety man back here to cover the deep part of a field.

Q. All right, sir.

A. In other words, you win or lose first from passes, and if you have three-deep men back here, they play the deep part of the field. Now, the differences in that—do we have an eraser, sir?—is some teams, we did for years—

[fol. 537] Q. Before you knock that down; is that Georgia's defense or Alabama's?

A. I said, basically speaking, I thought they would have the Tennessee and Alabama tendencies because of the Tennessee success with it, and because we have had fairly good success, and Bob Ford is over there, plus the fact we saw them in spring practice with the three-deep. The difference—

The Court: Why the Tennessee tendencies? Was there a Georgia coach from Tennessee?

The Witness: I think they have at least one from there, and we have Tennessee tendencies because over the years they beat us so many times, we tried to join them, but here is the difference. Here is a three-deep and here is a four-deep. These men vary. But, basically, we thought that they would certainly be a three-deep. Does that answer your question, sir?

By Mr. Schroder:

Q. That is a defensive formation—

A. Yes, sir.

Q.—that you have described?

A. Yes, sir.

Q. Would you please describe now for the Court and Jury what offensive formations you trained your boys to expect at the Georgia—during the Georgia-Alabama game?

A. Well, first of all, sir, having been in the—as we call it—we call it the slots; first of all, they were in this slot a hundred and nine times in the spring game. We have to assume that they are going to be in that in our game. [fol. 538] However, since we used the same thing some, we don't feel like—we didn't feel like that we would have to work as much against that if it was something they didn't use. Next to this particular offense, this thing that we thought, based on their personnel, particularly the big fine—I should say great end, Babb, I expected fully—fully expected them to be in a wide slot, a wide slot like this

with the end way out. The reason for putting him way out, of course, is to get him off the line of scrimmage where you can't hold him up.

First of all, let's go back here. If he is in here, and here is a linebacker and here is a halfback, and here is a safety, you can mix it up and cover him or attempt to cover him with different people. One time you can try him on it; the next time you can try him on it; and occasionally you can put him on it, but when you put him way out like that, then the halfback has to move out, and not only can't he get off the—

Q. When you say "the halfback," you mean the Alabama halfback?

A. The defensive halfback has to move out with with him, and you—you can no longer mix it up with three different men covering, which makes it more difficult. All you can do then—all I think you can do, you can double cover him occasionally with this man out like that. Now, then, when you put him out here, it certainly weakens your running strength in here. It has not weakened anything over here, because that man can take one-step motion and be there and have your normal defense. So, you have weakened your running attack here.

So, in addition to that, I fully expected them to take this man here and move him over here, giving him strength over here with this one man still out, way out here, [fol. 539] fifteen yards or so, and of course, that is an unbalanced line. You haven't weakened yourself too much to the weak side, but you have—you have at least a yard or a yard and a half less distance to go to get there. You have strengthened yourself to the strong side running tremendously. So, with this unbalanced thing which you drop an end off out here and double cover him a lot, it is much more difficult to drop the end off because you have running strength in here, and I fully expected them to do that.

I fully expected them to move him from side to side because there was a great deal of difference on our own half-

back defense plus the field position. An important thing is field position. We expected occasionally for him to be out from regular formation, but you can see when you put him out there on regular formation, that you have taken away a lot of your strength right in here, and we use the same formation, and I use—we take away a lot of our strength right in there. Does that answer your question, sir?

Q. Yes, sir.

A. If it doesn't, let's go over it again.

Q. Let me—let me go to the greenboard here for a minute, now, while we have it here. Without regard to what the name is up here, do different teams use different names for set formations?

A. Different terminology; yes, sir.

Q. Well, we have been using Georgia's terminology when we were referring to this particular formation, and it seems they call it a pro-set, that is a normal slot with the other—the other side end out fifteen yards?

A. Well, we call it—I think it is simpler to call it slot, [fol. 540] because they know what they are saying when they say slot, and in this case, left end out.

Q. Fifteen yards?

A. Eight, fifteen; we put him out seven sometimes.

Q. Did the University of Georgia employ that formation in its game against the University of Alabama on September 22, 1962?

A. Unfortunately they did; we didn't expect that much of them.

Q. What sort of a defense did you have planned by the use of that formation setup?

A. Well, sir, first of all—

Q. Just erase that out.

A. Yes, sir. First of all, we thought that to beat Georgia the first thing we had to do was stop Rexler—

Q. Rakestraw?

A. —Rakestraw, the great quarterback, and we would rather have him passing than running. In other words, he

does both very well, but we thought we would prefer him to throw than run with the ball. Although in the latter part of the season, the year before after he got over his injuries, he did both very well. So, what we decided to do, something we didn't do very often—let's put the three-deep back here—we decided to play a five-man line, a five-three, or what amounts to a five-three. We usually play a rover, a wide tackle six, a wide tackle—I will show that. We, normally speaking, play defense like this, and put an extra man to the formation.

Q. To strengthen the formation?

A. To strengthen the formation, or to the field position. In other words, if that was on the hashmark—

Q. Tell us what a hashmark is?

A. A hashmark is the mark there where they put the [fol. 541] ball down. Sixty-seven per cent—normally speaking, sixty-seven percent of your football is played on one of the two hashmarkings. You are only in the middle thirty-three per cent of the time, normally speaking.

Q. That is with reference to side-to-side?

A. Yes, sir.

Q. All right.

A. We either put it to the formation of the extra man or if it is along the side of the field we put the extra man or double-wobble, meaning by double-wobble—let's take the halfback, move a little wider out, move this safety over a little bit more, and this man here plays a little deeper because he has an extra man up there to take care of that area. But we were afraid on that defense that their fine quarterback would hurt us coming out there on the option, either way, running or passing. We decided—wait a minute; before I leave that, if we don't play that defense we will play what we call our north category, and move the guards. In other words, with our ends there, our tackles here, our linebackers here and have the guards either move like that or play balanced, and that becomes a stack, you can see where one is stacked behind the other, but it is a balanced defense because we have as many men on one

side as we do on the other. But there, again, in certain situations we don't want to bring our ends in there hard to contain their quarterback to make him throw the ball, because we don't know we can cover the flat, but we want to contain him.

So, for that game and for every game, for that matter, we have a new defense every week. It may vary. May not be much change, but the other defenses play year in and year out, but for this particular game, in an effort to [fol. 542] contain him quickly, we wanted to put out two men here, depending on the split, and see how fast they could get back here to contain Rakestraw and make him have to throw instead of run with the football. Now, then, in doing that, then we had to put—we put our tackles here in different places. But let's put them right here, and we will put a guard behind a guard expecting them to read and slant to stop the trap. Now—

Q. Everytime you say something like "reading" and "trap"—

A. What I mean by "reading," gentlemen, is you are sitting and watching this man; if he blocks down to that man, common sense would tell you that the play is probably coming in here, and he can go there. If he blocks out here, common sense will tell you the play is coming in here, and he will go here. If he sets for a pass, common sense will tell you it is a pass, and you start back. If he pulls in that direction, common sense will tell you the play is over in that direction, and you go in that direction. If he pulls in this direction, common sense will tell you the play is over here, and you will run through or come in this direction. They are there to try to stop the trap, to mix it up, and still pursue the play.

Now, then, over here we will take our fullback and either pull him up on the line or put him behind here. That was our plan, or put him behind there to where he would be in the pass defense over on this side. On the other side, on the other side most of the time we were going to cover the flat with the halfback, and we had a great fullback player

named Jordan, and we wanted to put Leroy right there because this side of the formation hasn't changed, and with one-step motion, that becomes a strong side. We wanted [fol. 543] Mr. Jordan there, because there he can get to both sides of the field, and he could make every tackle. That was our 'Bama defense at the Georgia game, the opening game.

Q. All right, sir. Was Alabama in the defense which you have just described when the University of Georgia first went into its normal slot with the weak side end out fifteen yards, being the one described on the board?

A. As I recall it, sir, we were in that 'Bama defense.

Q. That is the defense you have just described?

A. In the first of the game, five or six times and we were hurt on it. That doesn't speak very highly for me putting it in there, but we were hurt on it, I think four times, and we should have been hurt on it the other times. I wasn't against this; it wasn't a sound defense.

Q. Is that—

A. Against this it would be a sound defense, but not this. What they ran in the spring, it was a sound defense, but this—this it was not.

Q. Will you explain why it was not?

A. I certainly will, sir. All right, we put Jordan over here where the action is going to be. Lo and behold, they take the big, old, tall end and move him way out here, and we have got to put somebody out there with him, so that takes Jordan out there, and we move this man in a little, stunt this one over here, and they were smart enough to take our best football player and take him out of the park to where he couldn't do anything but play pass defense and get all mixed up, and we were counting on him being in here where he could get the folks.

[fol. 544] Q. The University of Alabama defense setup, then, was not adjusted for the formation which you—which is drawn on the second—on the lower part of that?

A. That was supposed to have been our basic defense, sir. If we know we are going to get a lot of this, we expect

this occasionally, but if we know we are going to get a lot of this we are going to play what we call split, which comes in what we call a north category that I showed you a while ago where we have the same number of people on each side, and where we can drop an end out there to take away the very short passes, keep the pressure off the halfback.

Q. Therefore, if you were expecting what is described there as the pro formation, you would have prepared your defenses differently than you did as you have described here?

A. Only the 'Bama defense; the rest of them were fine.

Q. Yes, sir.

A. Yes, sir.

Q. And when they did go into the so-called—what Georgia calls the pro-set, that had the effect of Leroy Jordan, who is your best linebacker, I assume—

A. He was our best football player, sir.

Q. Yes, sir. That took him out of the play?

A. Yes, sir.

Q. As a result of which, I believe you said, the University of Georgia did successfully employ that on at least four—they only ran it five times, I think the testimony yesterday showed, and they did succeed with that formation four out of the five times that they used it?

[fol. 545] A. I don't know whether it was three or four, sir, but we should have been hurt every time we were in it.

Q. Was something done to take care of the situation or to adjust your defenses later on in the game?

A. Well, we are not stark idiots. We will not do the same thing. I don't remember how soon. I know at the half we went over it, and we didn't play it any the second half. Jordan was calling the defenses, and knowing Leroy, I doubt if I told him to change, but knowing him, when they start taking him way out yonder, he will change and get back in here where he belongs, whether I told him to or not, and I think any good, smart football player would.

Q. You may return to the stand. In preparing your teams for the fall session, do coaches during the summer

exchange films with other coaches of the games that their respective teams have played during the summer?

A. Oh, normally speaking, yes, sir.

Q. Is that—does that sort of an arrangement exist between the University of Georgia and Alabama?

A. Yes, sir; and other schools. We have already exchanged with them, I think for this year.

Q. And the purpose of that—will you describe the purpose of that, please, sir?

A. Well, the purpose of that is to chart what they do, field position, number one; down yardage, number two, but to find out what they do what as best you can or when they have done what and who does it.

Q. And since all universities, or universities do do that, there is nothing wrong with that, with universities swapping films with each other?

A. Oh, no; everyone does it. The Conference approves it, N. C. A. A.; everybody approves it.

[fol. 546] Q. And the film, for example, that you exchanged with the University of Georgia during the summer of 1962, you were then given an opportunity to review every game they played during the year 1961?

A. Sir, I don't remember whether—how many we exchanged with them, and I personally don't review them all, but our staff does, and our players will before the game.

Q. And that is with the idea of learning as much as you can about each other? They are doing the same thing with Alabama films, are they not?

A. You can bet your life they are.

Q. And that is the—the idea of that is to learn as much as each coach can about the other team with reference to its formations, its plays, its defenses, and its personnel?

A. And personnel; yes, sir.

Q. In the last—let's see; the Georgia-Alabama game was played in September, 1962, September the 22nd—

The Court: Just a moment. The defense counsel, in fairness, wants the blackboard moved back. The Marshal can move it back.

Mr. Schroder: Sure.

The Court: If you are going to use that any further, you can keep it.

Mr. Schroder: No, sir. I will assure you it was not intentional.

[fol. 547] By Mr. Schroder:

Q. In the week of the game, which was played on September 22, 1962, or—I don't remember whether Friday was on the 13th, or Thursday; well, September the 13th, regardless of whether it was Thursday or Friday, from September the 13th until September the 22nd, what, if any, significant changes did you make in the Alabama defensive plan for the University of Georgia?

A. I don't think we would ever make any significant changes, sir. I think you set your basic stuff down normally speaking as you are drawing near the game. If you will—I say "if" and I am always apologizing to the team for saying "if"—I say if they should do this we will do that, or if they do that—probably do it on the day of the game, right on up, because based on something they could do, something that they ought to be doing, based on their personnel, and something you saw somebody do ten years before, you get—you want them to be sound; you want them to feel like they are prepared for any and everything, so, we will say, if they do this, we will do that.

Q. Yes, sir.

A. And as I say, I always apologize about all those "ifs."

Q. The purpose of that is, I believe you said, to get your boys' confidence, or if anything new is thrown against them they will be prepared?

A. Yes, sir.

The Court: I believe you are leading him, Mr. Schroder.
[fol. 548] Mr. Schroder: I didn't mean to, Your Honor. I thought he had already testified to it.

By Mr. Schroder:

Q. What is the purpose of that?

A. Well, the purpose is when they go on that field, I want them to feel like—I don't care if it rains, sleet, or snows, if they come out in nine spreads, whatever they do, we are prepared; it is a challenge to them, between me and that fellow I am playing on the other side.

Mr. Schroder: Let me see the notes, please.

By Mr. Schroder:

Q. I believe you testified a moment ago with reference to the recorded—when I say “recorded,” that is a bad word—with respect to the telephone calls that the records of the company showed were made on September 13 and September 16, you had no indication of what might have been said?

A. I don't have any recollection that they were made, but if they were made, I do not have any recollection what was said.

Q. You were, at that time, head of the athletic department at Alabama, as Coach Butts was at Georgia?

A. Yes, sir.

Q. Tell us what there is that could be discussed by—or what ought to be and what is discussed between athletic directors before their two teams meet?

A. If we talked, if we did, some things that we could have talked about or should have talked about—

[fol. 549] Mr. Cody: Your Honor, I want to object to that.

The Court: Yes, sir; I think that is highly speculative. I will let him do this, Mr. Schroder. I will let him testify what athletic directors of that nature—

Mr. Schroder: Subjects they would discuss.

The Court: —if he calls to other athletic directors, and the usual procedure.

Mr. Schroder: Yes, sir.

The Court: But as to the contingencies, and “we could have talked,” I think that is too speculative.

Mr. Schroder: I withdraw it.

The Court: All right.

By Mr. Schroder:

Q. You had been athletic director of the University of Alabama for how many years?

A. Beginning the sixth year, sir.

Q. Were you also athletic director of the other universities you mentioned?

A. I was at Texas A & M, and I was not at the University of Kentucky and University of Maryland.

[fol. 550] Q. You have been athletic director for how many years now?

A. I guess nine.

Q. When a school is preparing to meet another school in a football game, what is the custom among athletic directors with regard to what arrangements have to be made, and do they talk about matters such as that?

A. Sir, I don't know what the customs are, because I am a football coach too, so, certainly, the arrangement has to be made with the athletic directors and approved for everything, approved by them. Being a football coach, too, I don't believe I could give you an intelligent answer on what a director of athletics would do on it.

Q. Did you have matters personally between yourself and Coach Butts—you spoke of many conversations that you did have with him during 1962, both before September 22 and after September 22; did you all have matters of a personal nature that you discussed. •

A. I don't think we did. I think we had many matters that we discussed at one time or another pertaining to our football program and the football game or games, and one financial matter, I think, we had in common that I have discussed with him quite a few times.

Q. Was that an investment in some company?

A. Yes, sir.

The Court: You mean you all had a common investment?

The Witness: Yes, sir.

[fol. 551] By Mr. Schroder:

Q. Coach Bryant, I am going to hand you what has been identified as Defendant's Exhibit 12, and for your information that has been identified and authenticated by the witness George Burnett as representing notes he made during—

A. I have got to borrow some specs here, sir; I left my specs on the plane.

Mr. Cody: I will lend him mine.

The Witness: These are curious too.

The Marshal: Let's have order.

The Witness: I will try these.

Mr. Schroder: Can you read with those all right?

The Witness: Yes, sir; I think so.

By Mr. Schroder:

Q. Starting with Page 1, Coach Bryant, there is a notation at the top which reads "Bear - Bryant, Wally - Butts," is there anything unusual about that entry, if it relates to what you and Butts were supposed to have been talking about over the telephone with each other?

[fol. 552] A. The only thing that I can say there, sir, is as long as I have known Coach Butts he has never called me "Bear," if he is supposed to be talking to me, never.

Q. How does he address you?

A. He calls me "Paul." If he is speaking somewhere, like in Cullman the week before our game, he will refer to me as "Bear" because hoping the people will know I am the Alabama coach, I guess, and make his stories funnier, but he has never called me "Bear," ever.

Q. Let's pass on now to the next note or the only other note on that Page 1, which reads, "Reismueller, greatest in history"; does that mean anything to you, and if it does, will you tell us what it is?

A. Well, Rissmiller we thought was a terrific prospect, and we tried to recruit him, but they beat us for him. I have heard Coach Butts at banquets—maybe not at banquets, but on press talks with me or talking with a group comparing personnel there then with personnel he had, but I don't ever recall him comparing Rissmiller with some of his great tackles in the past when we were talking, but I think he is a terrific football player and sorry we had to play against him.

Q. I believe you said you were familiar with his capabilities?

A. Very familiar with them; yes, sir; we tried to get him.

Q. Turning to Page 2, the first line there, "Bakestraw to right"; then it has a line drawn under that.

Mr. Schroder: I am unable to know, Your Honor, whether that is one entry or whether it is connected with the entry below it.

[fol. 553] By Mr. Schroder:

Q. So, Mr. Witness, will you take them separately, see there in the first line reading "Bakestraw to right," and tell us what, if anything, that would mean to you, and then take the next entry below that by itself and tell us what, if anything, that entry would mean to you, and then take them both together and tell us.

A. "Bakestraw to right" wouldn't mean anything to anyone, I don't think. "Optional left pass", to me that would mean it is going to be a run or a pass.

Q. That is what "optional" means?

A. Yes, sir.

Q. You have got the option of running or passing?

A. Running or passing; yes, sir. "If can block corner man keeps running", I think that is right. If my little boy didn't do that, I would want to spank him. You block them, you keep running. If you don't block them, you would throw the ball; I guess that is what it means.

Q. All right, sir. The next entry reads, "well disciplined ball club, added two coaches"; what, if any, comment would you like to make about that—maybe—does that mean anything to you in general or in particular?

A. Well, no, sir; not really. But if that was said, I would think I would be the one saying it about our ball club, and we had a couple of new coaches.

Q. Did you consider your team to be a well disciplined ball club?

A. Yes, sir; self disciplined.

Q. Turning to Page 3, Coach Bryant, the first note at the top of that page reads, and I quote, "on side guard pulls on sweep"; what, if anything, does that entry mean to you as related to either your team or the University of Georgia's team?

[fol. 554] A. Well, to me that would mean that the on side guard pulls on the sweep. We pull our on side guard on the sweep—we don't pull him; we have a signal where he swaps assignment with the next man, but I don't think—I could be wrong; you can see if I am—they didn't pull the on side guard. Missouri does it, and they do it well. They are the only team I know of that does a real fine job of pulling the on side guard.

Q. Will you please step down and use part of this board where I can preserve the other, because some other witness may want to use it, or if you erase it, put it back just like it is, and please indicate or describe to the Jury what you mean by an exchange or a swing or a switch.

A. First place, sir, gentlemen, the on side is the side where you are going, where the ball winds up. The guard pulling and leading the play around here; that in our terminology that would be pulling. But we have these two men on our sweep; they are responsible for 1, 2 wherever they are lined up. Let's say we have got a stack like that, a defensive man there, and one there. The on side, the man in front is 1; the second man is 2. Well, this man's assignment is 1, and he is way outside, and it is a very

difficult block; it is an impossible block. So then we will say a signal—actually our signal is “green”.

Q. What is it? “Green”?

A. “Green.”

Q. Who says that?

A. This man would be the one who makes the call, because he is the one that has got the impossible block. He would say “green”, and this tackle would swing here, he would swing or pull right around there and block him. He would go on to that point there and try to block who wound up as number 2.

[fol. 555] Q. Is that—from what you have drawn there on the board, would it be correct to say that is an area blocking?

A. That is what we call it; yes, sir; area blocking. You go to an area, and the number that is there when you get to that area, that is the man you block.

Q. The tackle would take the guard because the opposing defender is on the outside, and he can't block?

A. The area outside the guard; yes, sir.

Q. So the tackle takes him when this man says “green”?

A. Yes, sir.

Q. The tackle blocks him and the guard then takes over the tackle who was supposed to block right in this area here, whoever it happens to be?

A. Whoever winds up down there when he gets there.

Q. That is known as a “swing block” or an “exchange block”?

A. Exchange block. We call it a “slot block” or an “exchange block” where they are swapping assignments.

Q. The next entry is described or reads as follows: “don't overshift”. Now, Coach Bryant, what, if anything, does that mean to you, relating the question to the University of Georgia and/or the University of Georgia football team?

A. Well, both of us use—we overshift a lot, and so do they.

Q. When you say “overshift,” would you describe that to the Jury what it means?

A. Yes, sir; it was something that I had up here earlier about putting a rover to one side or the other. There are different ways of doing it. We move the rover over. Let's say, now, this time that we are in a balanced defense, and we have a man here and a man here and a man here, and [fol. 556] one here, and one here, and one here, with three deep, and a linebacker back here; that, of course, is a balanced defense. To us that is a north category. Any balanced defense, regardless of where they are lined up, where it is the same number of people on each side, it is a north category. A while ago when I took a man and put him on the other side, or vice-versa, to us, that is east and west, actually, and it is a rover defense; to overshift, you move these people in or out. This man will move in here pretty tight; this man will move over here; this man here would move there, and you would have your end there, with your linebacker there, and you would wind up with the same thing we referred to as an "overshift" or "rover defense."

Q. Thank you, sir.

A. Does that answer it?

Q. Yes, sir. Is it or was it your testimony that the University of Alabama does that and did do it in that game?

A. Oh, we have done it for years, sir, and I think we have done a lot of it. I didn't check the film on it. I think they did a lot of it against us.

Q. In the 1962 game?

A. Yes, sir.

Q. The next entry reads, "Woodward commits fast-safety man." Obviously that is referring to some one particular individual. Could you amplify as to what that means to you?

A. Well, to me—I thought he was a real fine defensive safety or defensive football player, and to me committing quickly, that would have to be forward. I don't believe anybody would commit quickly in the wrong direction. So, if they are on defense, there is a safety; that would have [fol. 557] to mean he comes up fast, to me.

Q. Do you know whether or not Woodward does do what you have just described there?

A. I actually don't. If he does, I ought to be "bored for the hollow," because we don't throw a pass in there. If he comes up fast, we should have been throwing in there, and we haven't.

Q. Next entry reading, "weak defense, anybody except Blackburn"; evidently—I mean, obviously the notes are referring again to a specific individual. Would you comment on that, if it means anything to you related to either team?

A. It doesn't mean anything to me. I was looking at our scouting report this morning, and, of course, they have corrected this. It will be strong this year, but in our scouting report they said the whole secondary was weak.

Q. That was the scouting report that your scouts had prepared?

A. Yes, sir.

Q. For the Alabama-Georgia game?

A. Yes, sir. The secondary was the weakness.

Q. Does the name "Blackburn" mean anything to you?

A. The only thing that I—the only thing that I remember about it, I think he was ineligible and got eligible before we played.

Q. Top of Page 5, "Baer slot right, right end, split right end out," and we are assuming, without knowing, that "Baer" means "Babb", but at any rate, uncorrected or corrected, does that entry mean anything to you when related to the Georgia or Alabama football team?

A. If I just saw that I would think it was me, because [fol. 558] of the Baer part, and secondly because of the formation that we had used last year, ninety per cent of the time, probably ninety-five per cent of the time.

Q. Does Alabama employ the split right—slot right, split right end out?

A. We employ the slot right, left end out, and we also employ the slot right left end over and out the other way,

not a great deal, but occasionally, and come out of the huddle quickly, hoping it might foul the defense up; they might be overshifting in the wrong direction, sir.

Q. Next entry reads, "long count, left half in motion"; what, if anything, Coach Bryant, does that mean to you when related to the University of Georgia and/or the University of Alabama football teams?

A. I don't recall whether Georgia ever did that much to us or not. I do recall that we played Georgia in Birmingham when Coach Butts was coaching, that we used it quite a bit, and hurt them with it quite a bit, and I do recall that by putting a wide man, and I have talked with Coach Butts about this because he has hurt—he has hurt everybody, but he has hurt the four-spoke defense, the type that Tech and Tulane, and a lot of them employ, putting a wide man out and long motion toward him, and throwing certain patterns off of that. When we hurt his team in Birmingham, it was more about the keeping; a boy kept it, and ran with it. That's right, we do that.

Q. All right. You don't know whether Georgia does it or not?

A. I believe year before last—I may be wrong—that with an unbalanced line, with the end wide, that they did it a couple of times. Now, either that, or I saw them do it in a film, but I can't be sure, sir.

[fol. 559] Q. Did Georgia use an unbalanced line against Alabama in 1961?

A. Yes, sir; they did, and I thought it was a real smart strategy.

Q. Did the University of Georgia use an unbalanced line against Alabama in 1962?

A. Sir, I really don't remember. I expected it, but I really don't remember whether they did or not.

Q. The next entry reads, "best since Trippi," with the name "Porterfield" under the line I just read; what, if anything does that mean to you, Coach Bryant, when related to the University of Georgia football team?

A. Sir, I don't know. I have heard Coach Butts bragging on Georgia's players, and they all get better after you quit coaching; mine will get better, too; but I never heard him compare anybody with Mr. Trippi. I don't know what that means.

Q. The top of Page 5, there is an entry reading, again, "Baer on a hook on goal line"; does that mean anything to you related to either your team or that of the University of Georgia?

A. Well, only thing, sir, when you get down that close, you either have to hook or go out of bounds or something. I mean, out of the end zone. The area is so small, you at least have to cut your patterns down, regardless of whether it is a hook or sideline cut or what, because particularly on a hook you are going to the end zone, and of course, you are out of bounds when you go over that, so I think that would apply to anybody's football.

Q. Next entry, "slot to right, ends normal, (3 yards)"; as you read that entry, would you try to diagram it on the board here, please, sir?

[fol. 560] A. Yes, sir. It don't—really—what did it say? Slot right, ends three yards; it really doesn't mean a great deal to me; both ends out three yards. I don't think they are out wide enough to change secondary defense. You have got to get a man out, way out, so we don't do it, and I don't—that doesn't mean a great deal to me. We do put them way out like this. We did against Oklahoma in the Orange Bowl to make it difficult to cover the whole field and making it difficult to put two men, which we call double covering, on two different people, but so far as ends three-yard slot, that doesn't mean anything to me.

Q. All right, sir. The last entry on Page 5, Coach Bryant, reads, "Right halfback on fly, left halfback, quarterback gives to left halfback, left guard pulling blocks on corner"; does that mean anything to you as related to either Alabama or Georgia's football teams?

A. "Right halfback on fly, left halfback, quarterback," don't make sense to me; I don't know what it is talking about.

Q. Top of the next page, "Wide slot till goal line"; that was read by me from the notes there. Now, does that or not mean anything to you when related to either Georgia or Alabama's football teams?

A. Well, normally everyone, we do, I am sure, I think everyone does, the nearer you get to the goal line the more you cut down your formation to help—

Q. What do you mean by "cut down"?

A. Pull them closer together in an effort to keep leaking people from coming through, people leaking through the seams and throwing you a loop. When you get down there you don't want people coming from the inside out and [fol. 561] throwing you a loop, and I assume that is what that means; I don't know, sir.

Q. Next entry reads, "can't quick kick"; does that mean anything to you when related to the University of Georgia's football team?

A. No, sir; it doesn't; to ours either. We quick kick, and Georgia—I don't think it quick kicked this year, but Georgia quick kicked us last year, I think; if they didn't they quick kicked—I remember seeing them quick kick.

Q. The next entry reads, "slot right, right half on fly, screen on him." Does that mean anything to you?

A. No, sir; I don't know what that means.

Q. Can you mentally reproduce the picture?

A. Well, if "fly" means the man is in motion—I don't know whether it means motion. There is your right slot. Let's see what it says; "slot right, right half on fly." I would assume that that means him in motion. "Screen to him," I would say that it means him screening out here, and offhand, I wouldn't think this is a very sound play.

Q. When you say "screen to him," that means—

A. Let the lineman come through and send these people to take the secondary people back and try to have an area in here, and these linemen, after blocking or coming out here, setting up a wall or some interference in front of this man, and he goes back a little deeper and drops the ball out here to him the flat, and he has some people in front of him

to run interference for him, and the men already downfield would come back and block people like that, and if it works, you get a long gainer out of it.

Q. Do you have—

A. Tech does that very well.

Q. Do you have any play where you screen to the fly man as—do you know what the fly man is?

[fol. 562] A. I assume that it is the man in motion, sir, but I don't know. We refer to it as something else.

Q. You don't use the terminology "fly"?

A. No, sir.

Q. All right, sir. The last entry on Page 6 reads, "29-0 series, Baer catches everything they throw"; does that mean anything to you, Coach Bryant?

A. No, sir.

Q. In regards to either your team or the University of Georgia?

A. No, sir; it doesn't.

Q. You do not have any series by that name?

A. We have a—we have a play 29, sir, but we don't throw off of it. It is a fullback option.

Q. Top of Page 7, "slot right left end out fifteen yards." Is that the formation that appears on the bottom half of this board here?

A. Yes, sir.

Q. And I believe you have already testified at some length about Georgia's employing that formation in its 1962 game?

A. Yes, sir; and it is our basic formation. This is the first year we have had it as our basic formation, because we had a great passer, Joe Namath.

Q. N-a-m-a-t-h?

A. -t-h. We had a great end in Richard Williamson, and that is our basic formation. We had big strong halfback over here, Wilson, who would block like an end, and great runner, "Cotton" Clark. We thought that was the only formation for us to use. That was the formation that we ran in over ninety per cent of the time.

Q. When Georgia employed it against you, is that the formation that you had Leroy Jordan out in the pasture, as you said?

[fol. 563] A. Yes, sir.

Q. All right, sir. The next and last entry, "drop end off, contain with tackle," having a "Georgia" and an arrow pointing to "drop," and having "Defense" written below it within parenthesis. Did that entry mean anything to you as related to either Georgia's or Alabama's football team?

A. Well, it does to us, sir, because we have been doing that for years. We drop the end off and try to contain with a tackle. I might say the last time we played Coach Butts' team in Athens, he also broke us of doing it because he hurt us badly, but that is what we wound up doing in this game.

Q. Do you know whether or not the University of Georgia uses that same defense?

A. They use it some; yes, sir; I don't recall how much.

Q. That's all the notes. Well, there is an entry, final entry; you might read that and say if that means anything to you?

A. Well, the "614" is one of our office numbers. That is the only thing that means to me.

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PAUL WILLIAM BRYANT having resumed the stand, testified further as follows:

Direct examination (continued).

By Mr. Schroder:

Q. Coach Bryant, returning to the Saturday Evening Post article for a moment, it reads, Page 81, Column 1, that the telephone operator was overheard to say this to the [fol. 564] other party on the phone, "'Coach Bryant is out on the field, but he'll come to the phone. Do you want to hold, Coach Butts, or shall we call you back?'" This call,

although the Post article reads that it took place on Friday morning, September 14, I believe that the notes which you just had in your hand indicate the man listening in on the call recorded that it happened on Thursday morning, September 13. I want to direct two questions to you with respect to that quotation I just read from the article. The first one is, how close is the practice field at Tuscaloosa on the University campus to the telephone there, the nearest telephone in the office there?

A. To 641, sir?

Q. Yes, sir.

A. Well, it's three blocks, but since this came out, I have timed it, and knowing where the car was, walking out of my office and getting in the car and driving to the practice field and going through the gate and walking out to where I would be on the practice field and coming back, it takes thirteen minutes for me to do it, knowing where the car was and knowing I could get in the gate, and so forth.

Q. Does the date September 13, 1962, have any significance to you since the notes here that you have been looking at a moment ago indicate that the telephone call was intercepted at about 10:30 or 10:40 in the morning?

A. I don't know what you mean, sir.

Q. Was the University of Alabama practicing football on that day at that time?

A. No, sir; we were not. We had discontinued our two-day practice; we were not practicing that morning.

Q. Going further down Column 1 and reading again, this [fol. 565] quotation which is attributed to Burnett. "Butts also said that Rakestraw (Georgia quarterback Larry Rakestraw) tipped off what he was going to do by the way he held his feet. If one foot was behind the other, it meant he would drop back to pass. If they were together it meant he was setting himself to spin and hand off." Coach Bryant, to your knowledge, did Georgia quarterback Larry Rakestraw have the defect or deficiency described in that quotation which I described to you?

A. Not to my knowledge, sir.

Q. Would that have been of interest to an opposing coach or opposing players to know that a quarterback on the offensive team did have that tendency?

A. Well, sir, it might have been to some, but due to an experience I had once, it wouldn't have been to us.

Q. How is that?

A. We wouldn't have been interested at all.

Q. It is of no interest to know whether or not the quarterback is going to pass or run?

A. Well, if he knew that, but we knew that about a quarterback once, and we played him. We had gotten it out of a film, and we double checked it the week before, and I thought we were going to win the game, and the press and experts and so forth thought we were favored, and we played the quarterback, and were beaten thirty-four to seven or thirty-four to nothing, and I haven't been interested in what quarterbacks do anymore.

Q. What team was it?

A. It was L. S. U., that means Louisiana State University, L. S. U., when I was with Kentucky.

Q. There is one note among the others I reviewed with you before the recess this morning which one of my part-
[fol. 566] ners did not get the full answer, and I am not sure I did either, so I will ask you once more about it. It is on Page 4, and it reads, "Baer slot right, split right end out." Now, my question about that particular entry is this: does it mean anything to you with reference to the University of Georgia football team?

A. It does to our team, sir.

Q. Does it mean anything to you with reference to the University of Georgia's football team?

A. No, sir. However, the year before, and we were anticipating it this year, but they didn't have the slot, as I recall it. They had the end tight with the back which would actually be a wide slot with unbalance, but the way that is written there it doesn't mean anything to me as to the Georgia team.

Q. But you say it does mean something to you insofar as your team is concerned?

A. Yes, sir; it does; because our basic formation is the one on the bottom there which is slot right, left end out, and occasionally we will come up, and, of course, with that, your strength, your running strength is over here to your right.

Q. To here?

A. Yes, sir. But your throwing strength, I mean you have the type passer we have, he is out on the left, and they may put their rover or anyone may put their rover over there.

Q. When you say "rover"—

A. Double defending—

Q. The defending—

A. Double cover.

Q. All right, sir.

A. You come out quickly with the end on the other side. [fol. 567] Q. With the end over here?

A. Yes, sir; and we do that occasionally. And we want to go quickly when we do, hoping that they will have the rover on the wrong side or make a defensive mistake.

Q. Returning to the article, again, there is reference made in the article to the fact that something was said in the conversation, the alleged conversation about—and I can't find it at the moment—but about a telephone—whether or not Coach Butts was going to be at home on Sunday, and that you were to call him back on Sunday. I believe I asked you about that a moment ago, and you said you had no independent recollection of it, and that you had learned only by looking at the telephone records that there was conversation on Sunday between somebody using a phone in Tuscaloosa and someone using a phone at Coach Butts' residence.

Mr. Cody: Well, now, I want to object to Mr. Schroder testifying, Your Honor.

Mr. Schroder: I am not trying to—

Mr. Cody: I don't mind it if you will take the stand.

The Court: Yes, sir; I think you can ask him—the proper method—I sustain the objection. I think the proper method would be, was there a phone call on that day, and what was the gist of the conversation, if you remember it.

[fol. 568] Mr. Schroder: All right, sir.

By Mr. Schroder:

Q. Was there a phone call on that day from you to Coach Butts that you recall?

A. Not that I recall, sir, but according to our record, our telephone record that we had, a call was made.

Q. All right, sir. Do you or not know the substance of it? Do you know what was said?

A. On that particular time?

Q. Yes, sir.

A. No, sir; I do not.

Q. Were any other calls made by you on that day?

A. According to my—our records, and this surprised me, because actually I thought I was in Birmingham doing a commercial for Coca-Cola, but according to the record from the telephone company I also talked with Coach Darrell Royal.

Q. Who?

A. Darrell Royal at the University of Texas shortly before the call was made to Coach Butts' number.

Q. Do you have any knowledge about what you talked to Coach Darrell Royal about?

A. It had to be football, but I don't know.

Q. How long did that one last?

A. I think according to our records thirty-seven minutes.

Q. During September, 1962, did you or not have occasions during which you discussed matters with Coach Wallace Butts?

A. Yes, sir; both personally and over the telephone.

[fol. 569] Q. Will you tell us what some of the matters were that you did discuss with him?

A. Well, some of the things that I know I discussed with him, I don't know when, sir, but first of all it would be schedules. I don't mean this is in any certain order of importance, but schedules, because we have discussed—been discussing over and over about the advisability of moving the game further up into the year, about playing over there, whether or not to play the game in Tuscaloosa or in Birmingham, for Georgia to buy some lights and get them up there where we can play at night and draw a lot of people.

I know that we are bound to have discussed tickets. We certainly should have, because I don't think they have the IBM machines that we have to keep up with the tickets. His ticket office could never tell us how many tickets they had sold or how many they had left, and consequently when we played the University of Georgia we had a sell-out. We have four or five thousand outside that can't get in, and later on they send us back several hundred, five hundred tickets that we could have sold a dozen times, and I should have been talking with him about that, whether I was or not.

You have always got problems—not problems, but you have got to discuss your band situation. They don't just walk up and march in. They have to have preparations made for it. As I recall it, maybe one or two high schools—I don't recall—but they were very fine, did a wonderful job. They represented Georgia last year. We could have been talking about that.

We could have been talking about what time they wanted to work out; I don't know.

[fol. 570] We could have been talking about this investment we are both interested in; I don't know.

Q. Do you know whether or not you were talking to him about the enforcement policies of certain rules?

A. I was leading that because—yes, sir; I don't know about that particular day, but I discussed it with him several times. He was in Buffalo at an informal meeting, and there were several—we were directed by—in writing from the Commissioner and from the NCAA, or the Coaches'

Association, about the way they were going to interpret or enforce the butting or the unnecessary butting or the late whistle the butt block, and I still don't know what they meant, but when Wally returned from the meeting in Buffalo, he called me, and I appreciated it very much. He didn't only say Alabama, but since we play defense pretty hard, I think he said, "I think this was directed at you and L.S.U. and maybe someone else," but said "it is something you should know, because the directors are coming out with it." I don't know whether it come out then or not. "But there is something you should know, because it would be a shame for you or any team to lose a good player like Leroy Jordan," just using Leroy Jordan as an example, "any time, early in the game, or something, just because you didn't know how they were going to interpret the rule." It wasn't a rule change; it was an interpretation. So I asked Wally, I said, "When I see you, let's get together, and I will talk about this."

I did on a couple of occasions, I have talked with him about it on the phone. I went to a meeting in Birmingham where he made a talk about it. Commissioner Moore presided. We all—we wound up then in confusion. We invited Mr. Gardner to our campus to observe our practice. [fol. 571] We wanted him to see what we really taught, not so much to interpret the rule, but we wanted him to see what we taught, because I don't want to go out there on Saturday with folks coming in blowing whistles and me not knowing what they were blowing them about and costing us a football game. Although Mr. Gardner helped us tremendously, I didn't know how they were going to interpret the rule until about the third game, because you play and you see how they are going to act, and I am sure I talked with him about that on numerous occasions.

I talked with him about football, football in general, because that is my business; that is my hobby; and I just talk to him in general about football. I know I have talked to him about our football. I know I have talked to him about his football, particularly his passing game, because

he is the greatest passing coach this area has ever known, and most of us, what little we know about passing, we learned it from him. I had talked this over with several about passes in particular, but we could never make it go. We scored a touchdown against the University of Tennessee this year, and I think it was responsible for this game, because we hadn't been scoring on it. And another one was on a pass that he has hurt everybody on, particularly Georgia Tech or a team using the Georgia Tech defense with a wide man, whether it is a back or end, and a long motion in running a deep circle, a deep side line, and I know I have talked to him about that, because those are two things we wanted to do.

I have talked to him, I am sure, a lot of times about football in general. You can't get two coaches together when they don't talk about that.

Q. Is there anything unusual about that?

[fol. 572] A. About them talking?

Q. Yes, sir.

A. I don't know. I think I have read where a whole lot of them say they do. I have talked a whole lot with different coaches. I used to talk a lot to Coach Dodd here at Georgia Tech. I used to talk a lot to Coach Woodruff down in Florida, and I probably shouldn't say this, but Coach Woodruff, is longer winded on the phone than Coach Butts is. You get him on there, and you are going to miss dinner.

Q. What was—let's see; the first game in 1962—what was the record of the University of Alabama in football in 1962?

A. We had a great bunch of youngsters that dedicated themselves, and they won them all.

Q. Well, did they receive any honor?

A. They received the National Champion, both news agencies, Associated Press and United Press, and the MacArthur Bowl Award for National Champions also.

Q. Coach Bryant, these notes that you and I have been discussing before the recess when we went over them one by one, would those notes, in your opinion as a football

coach, be of any assistance to a football coach preparing his team to meet a team in the near future when the information contained in those notes is alleged to have been transmitted by someone connected with the team that you were preparing your team to play?

A. Sir, there may have been a couple of things in there I would have rather known than not known, but those notes, as far as I am concerned, would not help me one iota. As a matter of fact, all it would do is get me confused. The kind of things I want to know weren't in the notes.

[fol. 573] Q. Well, as a head football coach preparing your team for a game, what sort of things would you be interested in?

A. May I go to the board?

Q. Yes, sir.

A. First of all, what you do in the way of offense or defense or preparation is not going to win; those players wearing those uniforms are going to win and what they have in there is going to win. The things I would like to know, I would like to know the game plan, and the kind of stuff we have been talking about is not the game-plan. The first thing I would like to know, they are a field position football team. The field, the sidelines and hashmarks are not going to change, so the first thing I would like to know, both offensively and defensively, is what this team is going to do over here on the hash mark, because they will be on the hashmark sixty-seven per cent of the time and I thought that Georgia, when I learned their game plans, which was last week, did a real fine job, because they came out and put their formation into the hashmark knowing that we overshifted or put our rover to the long side of the field, for at worse they were going to get a balanced line defense, they weren't going to have to block the extra man over there. That was real important. I wanted to know what they were going to do there. If I had known they were going to do that, then I would line up in a balanced defense and disguise. On the snap of the ball I would have two extra guys getting over here where they are going.

Now, then, in the middle of the field out here, in game plans we'd like to know what their plans were. I learned last week that their plans out here was to take their formation and put it one way, knowing that we were going to [fol. 574] overshift and put an extra man over here. See, we have one more man over here than we have over there. Now, they have us over here. They take a one-step motion, and they are back and their strength is over there, and they hurt us. That is what I'd like to know.

Now, the next thing I'd like to know is, you have eleven to fourteen or fifteen first downs in the ball game. You are going to get the ball, normally speaking, from eleven to fourteen or fifteen times. If you get it any more than that, you are getting beat and they are kicking off to you. What I want to know, both offensively and defensively, I want to know what they are going to do on first down, because it is a guessing game on first down. After the first down somebody has an advantage, see, so the first down—now, in our football, and I will be quiet, I know I am talking too much—but in our football, here is a twenty yard line and here is a twenty yard line, and I don't care, you can check the pros, the Georgia Tech or Georgia or South Carolina or Notre Dame, I don't care, anybody; there will be five to seven plays in this area here between the 20's, five to seven plays that is going to determine the game. It may be one down to make two yards; it—offensively or defensively. It may be one down to make sixteen yards, either offensively or defensively. It is going to be five to seven plays that is going to decide the game. I want to know what they are going to do on those five to seven plays. When they get down in here on the goal line, I don't care what they do. They only got eleven, and we are going—we don't care what they do down there.

So, if you will tell us what they are going to do field position-wise, and what they are going to do on first down, [fol. 575] and what they are going to do on these big downs, five to seven of them, then we have a game plan, and if you can't win then, why, you are playing somebody

that is an awfully lot better than you are. Does that answer your question?

Q. Yes, sir; thank you. On the first page of the Saturday Evening Post article about you and Wallace Butts. I am going to read it to you, quote, "Not since the Chicago White Sox threw the 1919 World Series has there been a sports story as shocking as this one. This is the story of one fixed game of college football.

"Before the University of Georgia played the University of Alabama, last September 22, Wally Butts, athletic director of Georgia, gave Paul (Bear) Bryant, head coach of Alabama, Georgia's plays, defensive patterns, all the significant secrets Georgia's football team possessed.

"The corrupt here were not professional ball players gone wrong as in the 1919 Black Sox scandal. The corrupt here were not disreputable gamblers, as in the scandals continually afflicting college basketball. The corrupt were two men—Butts and Bryant—employed to educate and guide young men.

"How prevalent is the fixing of college football games? How often do teachers sell out their pupils? We don't know yet. For now we can only be appalled."

Coach Bryant, I want to ask you this question. Did or not you and the Plaintiff in this case, Wallace Butts, throw, fix or rig the outcome of the Georgia-Alabama game as you have been charged with doing by the Saturday Evening Post?

A. Absolutely not, and if we did we ought to go to jail, and anybody that had anything to do with this ought to [fol. 576] go to jail, because we didn't. Taking their money is not good enough.

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Cross examination.

By Mr. Cody:

Q. Coach Bryant, do you—you have got a very vivid memory of this football game of September 22, 1962, and

you have pretty well described that to the Jury. That game lasted sixty minutes, didn't it?

A. Yes, sir.

Q. As does every game?

A. Yes, sir.

Q. Has it occurred to you to check up on the length of this telephone conversation you had with Coach Butts on September the 16th?

A. It has.

Q. How long was it?

A. According to the record I got, sixty-seven minutes.

Q. And you don't remember anything about it?

A. I don't remember when or which one. Insofar as the football game, my vivid memory, I went over the notes up there this morning. Outside of that I hadn't even looked at them since the game or the movie.

Q. You put this call in to Coach Butts, didn't you?

A. I don't know.

Q. You don't remember whether you—

A. I don't know the call was placed.

Q. You don't know you made the call, and you don't remember anything that was said?

A. I remember plenty of things that were said sometime, [fol. 577] sir. I don't even know the call was made. I am not sure all these notes weren't made after the call was made.

Mr. Cody: I move to strike that, Your Honor; that is, not in response to my question.

The Court: Well, let's get the session down to what the facts are.

By Mr. Cody:

Q. You say your extension number is 641 on the switch-board down there?

A. That is one of them; yes, sir.

Q. What's this investment you and Coach Butts made; what is that?

A. Continental Enterprises, sir.

Q. Who got you into that?

A. Nobody got me into it; I got myself into it. A friend of mine told me that he thought it was a good investment, and I got myself into it.

Q. And if you sold out today—you still have your investment; is that right?

A. Some; some; yes.

Q. And if you sold out today, what would your loss be?

A. Well, since I talked to you in Birmingham, sir, it's gone down a little. I would say that my loss would be half of about sixty thousand dollars. It would put me a little loser; I am a pretty good winner on it so far.

Q. When we were talking about it in Birmingham, you said it was sixty then, didn't you?

[fol. 578] A. I think I said it would be forty to fifty. It's gone down a little. It would be a little more than it was then.

The Court: I didn't—is that loss or gain?

The Witness: That is a loss.

The Court: A loss?

The Witness: Unfortunately.

By Mr. Cody:

Q. Who is the man that got you in that investment?

A. No one got me into it, sir; Mr. Sam Wilson.

Q. In Jacksonville?

A. Yes, sir. He is the friend that told me about it, told a lot of people in our profession about it. He didn't get me into it. I thought it was a good deal, and the first time I bought it I made for me a lot of money out of it. The next time I bought it it went down.

Q. Do you remember when I was in Birmingham taking your deposition?

A. Yes, sir.

Q. On May the 27th?

A. Yes, sir.

Q. Didn't you make this statement: "And as a matter of fact, one of them, the reason him telling me is a good company, and going to make money, one of the reasons I [fol. 579] invested in it was because of Wally." Who were you talking about then, Wally Butts?

A. If I said that I was talking about Wally Butts, and I must have said it if you have it there.

Q. Did he induce you to buy—

A. No, sir, but he was a close friend to these people that I think own control of the company.

Q. But you did say, when this deposition was taken, that you went into it on account of Wally?

A. I don't believe I said it, but if you have got it down there, maybe I said it.

Q. Well, you remember being sworn before you gave this deposition?

A. Yes, sir.

Q. And it was before a Court Reporter?

A. Yes, sir.

Q. And your counsel was present?

A. Oh, I remember that, but Wally didn't talk me into buying it.

Q. What's that?

A. Wally didn't talk me into buying it.

Q. I didn't ask you that.

A. I might have talked him into it as far as that goes.

Q. I am talking about what your testimony was on May the 27th.

A. Well, it's the same now.

Q. Now, Coach Bryant, let's get back just a minute to some of these possible subject matters that you might have discussed on the phone with Coach Butts. Did you know that he hadn't had anything to do with the football team in nearly three years?

A. Why, certainly I knew that. He was Director of Athletics.

[fol. 580] Q. But he had nothing to do with coaching; you knew that, didn't you?

A. Why, certainly I knew it.

Q. All right, sir. Now, why would you be talking to him about a change in the schedule?

A. He is the Director of Athletics; he makes the schedules.

Q. Well, Coach Bryant, we are talking about an upcoming game that was to take place on September the 22nd, and you—we are talking, too, about a telephone conversation on September the 16th, six days off. How could you change the schedule of that game?

A. I didn't say I talked to him about the schedule on that date. I said sometimes I talked to him about schedules, many times. I doubt very seriously if we talked about the schedule that day, other than we might have talked about how fortunate we had been to move it from Tuscaloosa to Birmingham, because it was originally scheduled for Tuscaloosa and we would have made thirty or forty thousand dollars more out of it to play in Birmingham.

Q. I know you—

The Court: The Athletic Association would have made thirty or forty thousand dollars?

The Witness: Yes, sir. I represent them.

By Mr. Cody:

Q. I notice you made a reference to Leroy Jordan when you were giving us this talk about what you might have discussed on the telephone on September the 16th. You say he was the best player on your team and you had [fol. 581] reference to the possibility of him being out of the game?

A. Sir; the first time that Wally called me after he returned from Buffalo is when Leroy Jordan was mentioned, the first time.

Q. And you remember the conversation?

A. Yes, sir; I sure do. You mention Leroy Jordan, and I will remember it pretty good.

Q. When did that take place?

The Marshal: Let's have order.

A. I didn't look that up. You can look it up. I think it was sometime late in July.

Q. Who is president of the University of Alabama?

A. Dr. Frank A. Rose.

Q. Do you remember talking to him about three hours one Sunday night?

A. I certainly do.

Q. Did you know that on that same morning he had had a conference in Birmingham with Dr. Aderhold, President of the University of Georgia?

A. I didn't know it, sir, until about the middle or after he got through with me.

Q. And this matter that we are discussing today was the same subject matter of that conversation?

A. Yes, sir.

Q. In his conversation with you?

A. Yes, sir. And later at other places with Dr. Rose.

Q. Are you familiar with this letter that Dr. Rose wrote to Dr. Aderhold?

A. I saw it.

Q. In which he quotes you?

[fol. 582] A. I saw it in the paper or someplace, mostly in the paper, I think.

Q. Didn't Dr. Rose show it to you?

A. No, sir.

Q. Are you familiar with the letter?

A. I saw it in the paper, I think, sir; I know I saw it in the paper.

Q. Do you remember what was in it?

A. I remember some of the things that were in it.

Q. Let me ask you if one or two of these statements are true.

A. Okay, sir.

Q. "I have spent a great deal of time investigating thoroughly the questions that were raised during our meeting in Birmingham and have talked with Coach Bryant on at least two occasions." Is that true?

A. Yes, sir.

Q. Passing on to the third paragraph, "Coach Butts had discussed with Coach Bryant and the two were together at some meeting where Coach Butts told Coach Bryant that the University of Georgia had plays that would severely penalize the Alabama team and not only would cause Leroy Jordan, an Alabama player, to be expelled from the game, but could severely injure one of the offensive players on the Georgia team"; is that right?

A. No, sir; it is not, and if you will get his letter that he wrote later, you will see that it is not.

Q. Let's pass on to the fourth paragraph, then. "Coach Bryant asked Coach Butts to let him know what the plays were, and on September 14 he called Coach Bryant and told him. There was a question about another one of the offensive plays of the Georgia team that could seriously penalize the Alabama team and bring on additional injury to a player. Coach Bryant asked Coach Butts to check on that play, which he did, and called back on September 16." Is that correct?

A. No, sir.

Q. As a matter of fact, you called him on September 16; that is your evidence, isn't it?

A. I don't know that I called him. According to the telephone records somebody called him, and I suppose—I probably did, but I don't know that, sir.

Q. Let's pass on to the next paragraph. "It was then that Coach Bryant changed his defenses and invited Mr. George Gardner, Head of the Officials of the Southeastern Conference, to come to Tuscaloosa and interpret for him the legalities of his defenses. This Mr. Gardner did the following week." Is that correct?

A. No, sir; it isn't. You get Dr. Rose's letter—you get Dr. Rose over here, and he will answer that pretty well for you.

Q. We will get to him later. Let's finish your part of it first, sir.

A. Okay, sir.

Q. Passing to the next paragraph. "Coach Bryant informs me that calling this to his attention may have favored

the University of Alabama football team, but that he doubts it seriously. He did say that it prevented him from using illegal plays after the new change of rules." Is that correct?

A. No, sir. We don't use illegal plays anyway. It might have saved us penalties or saved us losing Jordan.

Q. And how long has Dr. Rose been President of the University of Alabama?

A. Sir, I think six years.

[fol. 584] Q. Was he there when you came as coach?

A. Yes, sir.

Q. Do you know whether or not he ever taught English?

A. I don't know, sir.

Q. You know anything about—

A. I think he is capable of teaching anything.

Q. You know anything about his educational background?

A. No. I know he is one of the best educated men in the world but not on football terminology. I can beat him on football terminology.

A. I think that letter was hurriedly written by the President, going out of town, to another President, that he thought it was in confidence, and I think that he—he came out with another letter explaining the difference in plays and techniques, and that he didn't understand football terminology, and I think you get him up here on this stand he will straighten that out real quick like.

Q. Let me ask you this question, then, Coach Bryant. Doesn't it seem strange to you that in your three-hour conference with Dr. Rose that you then remembered the subject matter of this alleged telephone conversation, and yet you don't remember anything about it now?

A. I didn't remember anything about the telephone conversation then or now any more than I have said. The things that we could have talked about, I don't know even it was a telephone conversation. I told him the same thing that I am telling you now.

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JIMMY SHARP called as a witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

[fol. 585] Direct examination.

By Mr. Schroder:

Q. State your full name, please, sir.

A. Jimmy Sharp.

Q. Where do you live, Mr. Sharp.

A. Well, I am presently residing in Tuscaloosa at the University of Alabama. My home is in Montgomery, Alabama.

Q. Speak up so the gentlemen over here can also hear you, please sir. Where did you receive your college education, Mr. Sharp?

A. At the University of Alabama.

Q. Did you engage in athletics while there?

A. Yes; I did.

Q. Did you play football while there?

A. Yes.

Q. What position did you play on the football team?

A. I played guard.

Q. Were you on the first team?

A. Yes, sir.

Q. In last fall's game, 1962, between the University of Georgia and Alabama, did you play as first string guard for the University of Alabama?

A. Yes; I did.

Q. Mr. Sharp, in that football game, which was played in Birmingham, did or not the University of Georgia present a formation which came as a surprise to the University of Alabama?

A. Yes. We weren't prepared, we weren't expecting the formation that they came out with. It was what we refer to as a slot out.

Q. Would you diagram that one on the board here for me, please, sir?

[fol. 586] A. This end split way out. There is the basic line formation which we weren't expecting, and the defense we were in at the time, the reason we weren't expecting it, all our game plans—

Q. Would you please let the Jury hear what you say. Speak a little louder.

A. This was the formation that sort of—it confused us. It did confuse us. We hadn't anticipated it, and we couldn't make the necessary adjustments.

Q. Is that commonly known or would a description of that be slot right with the left end out fifteen yards?

A. Yes, sir.

Q. All right, sir. That formation was presented by the University of Georgia during the first quarter of the Alabama game?

A. Yes; I believe it was five times.

Q. In what respects did it confuse you as one of the members of the defensive team and the other members of the Alabama Defensive team?

A. Well, me, in particular, as far as my position, I wasn't the one that was greatly affected. It was affecting our linebackers and our secondary. The way this would have—if we had played the defense that we had worked for in the game, it would have taken our linebacker, Leroy Jordan, the strongest player on our team, and placed him way out in order to cover this.

Q. Is that what happened?

A. Yes, sir. Well, at first it was just mass confusion, because we hadn't worked in practice on the adjustment. That would be the normal adjustment, and we hadn't worked on it, and there was a lot of confusion, and they were wide open to the play.

Q. That play was successfully used by the University [fol. 587] of Georgia on at least four out of the five times it was used?

A. Four; yes, sir; three of them were successful and on the fourth the fellow just dropped the pass. He was wide open down the sideline.

Q. The other—are you familiar with the other formation that was employed by the University of Georgia to any particular length or extent of time during the game? Could you describe what that was?

A. I guess you are referring to the slot formation?

Q. Yes, sir. Could you diagram that for me right here, please, sir? That is what is referred to as the regular slot formation?

A. Yes, sir.

Q. What distance is there in the regular slot formation between the tackle and the end?

A. Well, the normal distance here is three yards. Of course, it varies a few inches or something like that.

Q. You may go back to the stand. Did or not the University of Georgia in the spring game of that year, 1962, give any indication that that was their basic formation that they did expect to use?

A. Yes, sir; they did. In fact, they ran it out of a total of a hundred nine plays—a hundred and thirteen plays in the game, and they ran it a hundred and nine, some form of this slot.

Q. From that formation approximately how many plays can be run?

A. Well, there are a variety of plays you can run from that. You can run your whole attack. This is designed for several reasons. The basic principals behind it—by placing the slot man over there, you are trying to create a line for a running game and also to compliment a spin-[fol. 588] out action which Georgia had come on strong with this Rakestraw, and he was a real fine passer. You can get receivers out fast into that flat or down, you can—your halfback in the slot can aid in blocking; he is closer to the line. He can get to him quicker. Your defense is spread out to create that lane. Also the defense is confused by him being so close to the line that the defensive personnel doesn't really know who is coming. He's got an extra man, where before he had a little time to look and check. Georgia had used this formation in '61. At this

time they had experienced quarterbacks. They had just lost the fine Tarkington and no experience, of course, and they had primarily in their spring game, in their formation—what I mean by that, the three backs in the backfield, with no slot or split. They would run this formation and other formations in '61 a number of times. Towards the end of the season they began to run this formation and other passing formations. In fact, they ran the slot out in '61 also. But this time I think they had different distances. I am not sure about that, but this was the cause of the upsurge of Rakestraw and his passing game and into the '62 season we had taken all of the films and all the spring games statistics and plays and what they had done, and we believed this to be what they would do, since Rakestraw was such a fine passer, and they had more speed in the backfield. We thought that this would be the fine play.

Q. You mean formation?

A. Or formation.

Q. Does Alabama use approximately the same formation in its offense? Does Alabama use this formation also?

A. Yes, sir; they do. Georgia's offense and ours are very similar in some ways.

[fol. 589] Q. During the last week of practice before the game on Saturday night in Birmingham, September 22, were there any changes in the basic defensive formations that you had been coached on before that week?

A. No, sir. No changes. We, of course, when we work on the defense, we work on, I guess, about every formation that the coaches can think of that has ever been run, including some that some of the coaches make up, to expect the unexpected, but we hadn't felt they'd throw that, and it shows in the film, and by the five plays—well, the four plays being open, there was some little confusion.

Q. You said you hadn't expected Georgia to throw that?

A. I mean, the slot out.

Q. The slot with the left end out, known at Georgia as pro-set?

A. Pro-set.

Q. Were you a member of the 1961 National Champion Football Team?

A. Yes; I was.

Mr. Schroder: Just one moment. May I check?

The Court: Yes, sir.

By Mr. Schroder:

Q. During the game in Birmingham between Georgia and—the University of Georgia and the University of Alabama, did you yourself or did you hear any of your brother players on Alabama's team call out any such thing as "you can't run '80-8 pop' on us"?

[fol. 590] A. No, sir; I don't think I have ever heard that. That was new to me when I read it. We do—we are taught to key different people in the backfield and especially the guards. Jimmy Wilson and myself—

Q. Speak up, please.

A. Jimmy Wilson and myself were coached by Coach James to look into the backfield, to pick up keys and study the game films that we had on their previous games, things they have done, and try to pick up certain keys. We would holler out; we had a code we'd holler out for this to alert the other guards, but that was the difference between me and Jimmy.

Q. Other members of the team also have trade names or words they would use in exchanging information?

A. Yes, sir. Sometimes playing teams that had a swing-back sitting out by itself, they'd go to run back to the other side away from him, you'd catch him leaning back. It is a normal tendency; you can't get a level stance and come back this way; it is a tendency, the lean-back. We had certain codes. I know one game we used "red" and "white", "red" if you are going right and "white" if you are going left. The reason we used code names, we felt if we called out, "Richard, he's coming right", or "Bill, he's coming left", we are going to tip them off that somebody on their team is being tipped off, and at the half time they can go to the sideline and correct this.

Q. Is it customary or not during a college football game for the two opposing teams to carry on a lot of chatter among themselves?

A. No, sir; it is not customary. Of course, you are not supposed to. There is always some words passed.

Q. I didn't—I mean, friendly chatter?

A. Well—

[fol. 591] The Marshal: Order, please.

By the Witness:

A. I was referring to that too. You play against these boys two or three years, you begin to know them real well, and you studied the game films, and you study everything they do, and you know them, you get a good block on somebody. You say, "how did you like that, So-And-So," or something like that. It's always a little something going on.

Q. Always something going on? Did you or not get to know the Georgia guard, Wally Williamson, during the three years he was at Georgia?

A. Yes, sir; I got to know him.

Q. Wally play in that game for Georgia in Birmingham?

A. Yes, sir.

Q. Do you know the difference between a switch block or an exchange block by a guard and a tackle and pulling a guard out to lead interference?

A. Well, yes; I think I know,—your terminology is not the same as ours, but I think I know what you are talking about.

Q. It is not really mine. You tell me what a switch block means to you or an exchange block or swap block?

A. A switch block or exchange block to me, in our terminology, I think, would be what we call a green.

Q. Green?

A. We have code names. We call it the line of scrimmage; it is according to how the defense is lined up. We'd come to the line and recognize the defense. We will do a lot of recognition blocking, seeing the defense and blocking

as such, and we come to the line and "green" is the exchange block between the guard and tackle, when the play [fol. 592] was going wide or spin-out pass where the two men that the guard and tackle had to block had outside angles on them, meaning that both the guard and the tackle would have to really get after it, and it was a real difficult block. So, by alerting each other with "green" the tackle would come down and block the guard's man and the guard would pull out and loop back in, getting a little depth to take the other man, thereby be in a little better position in being able to block them, and we did this very effectively.

Q. That is, when the guard and the tackle swapped, switched, or exchanged blocking assignments, the guard then comes into the area where the tackle was supposed to block and protect that area; is that right?

A. Yes, sir.

CHARLES PELL, called as witness on behalf of the Plaintiff, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Schroder:

Q. Your name is Charles Pell?

A. Yes, sir.

Q. Where do you live, Mr. Pell?

A. Tuscaloosa, Alabama presently.

Q. Where did you receive your college education?

A. At the University of Alabama.

Q. Are you still studying there?

A. Well, I am in summer school; yes, sir.

[fol. 593] Q. Have you participated in athletics there at the University?

A. Yes, sir.

Q. Are you a member of the football team?

A. Well, I was until I—my eligibility ran out.

Q. Did you—were you a member of the 1962 Alabama football team?

A. Yes; I was.

Q. What position did you play on that team, Mr. Pell?

A. I was a tackle.

Q. A tackle?

A. Yes, sir.

Q. What do you weigh? What did you weigh on the night of the game?

A. 189.

Q. Do you know Mr. Jimmy Sharp?

A. Yes; I do, sir.

Q. Did he play on the same team?

A. Yes; he did.

Q. He played guard?

A. Yes, sir.

Q. What did he weigh?

A. He weighed about 182.

Q. Were you on the first team?

A. Yes, sir.

Q. Now, Mr. Pell, in preparing yourselves to play in a football game against any university, do you have given to you any information relating to the strength and weaknesses of your coming opponents?

A. Yes, sir; we do. We have a scouting report which is compiled for each opponent.

Q. Would you please describe for the Court and Jury what is meant by a scouting report?

A. Well, a scouting report is compiled by one of the [fol. 594] assistant coaches. Some of the coaches, they divide up the games, and their responsibility is to scout this team and to pinpoint their strong points, pinpoint their weak points, and then to put it down into a scouting report. Also to study old films, break the games down. For instance, if—all the plays they run on first down and ten yards to go, all the plays they run on second down and long yardage, so on and so forth. This will give the team a picture of their tendencies. They also have the defenses that the team has been known to run. These defenses are

not only the previous year's, but also the defenses that it is known the coaches believe in, also the offensive ideas of the coaches, and they compiled this from years before and compile downs so the players can understand it and study it and learn it and be better prepared for the game.

Q. Is that common practice in football?

A. Yes, sir; it is.

Q. Now, did Alabama have a scouting report such as you have described preparatory to its game against the University of Georgia in 1961?

A. Yes; we did.

Q. Would you tell the Court and Jury in essence what that was?

A. Well, the scouting report was compiled by Coach Charlie Bradshaw, presently at Kentucky. It was his job to find a scouting report, and actually it contains all that I described, and it has an introduction. It gives us an idea of what we have to do to win, and by studying what Georgia would do or has been doing or we think they might do, we have a better idea. We go in the game prepared mentally and physically. In 1961 we had an idea of how Georgia was football-wise, and I quote, "They will be bigger and [fol. 595] physically stronger than we are. The backfield will not be as fast as their starting backfield of last year but they do have some good backs with Jackson and Guthrie." And it also tells us what we had to do to win:

"We can beat Georgia if we give our very best 110 per cent effort." And it said also, "It will take our very best to win."

Q. Do you have a scouting report for the game of 1962?

A. Yes; I do. Also it contained all that I described before, plus "Georgia is going to have another fine football team. They will be bigger physically and stronger than last year." Their young backs, they have a lot more speed in their backfield, their quarterback string with Rakestraw had been improved since he had gained a year's experience, and he was a much more mature ball player, and their strength would again be in the line, and their weakness was in the defensive secondary.

Q. That scouting report or any scouting report is usually completed sometime in August?

A. Yes, sir. They usually have all their work down in August; yes, sir.

Q. And from the first day of practice on up until the first game the players are coached and trained in accordance with the information that is contained in the report?

A. Yes, sir. Also that and also during the spring practice of the previous spring we prepare for our first game and our next season game during the spring. That is the purpose of spring training.

Q. From September 1st until the game against Georgia on September 22, were there any significant changes made in the defenses that Alabama was preparing to use in that game?

[fol. 596] A. No, sir; there was not.

Q. What defense, primarily, did Alabama plan to employ against Georgia in the game of 1962?

A. Well, Coach Stallings, our defensive coach, had, after studying their spring game, which showed Georgia running the slot offense to a tune of 109 times out of 113, so Coach Stallings and the other coaches got together and devised a defense we called the "Bama" defense. This is a regular 5-3 defense.

Q. Is that what you are referring to when you refer to the slot?

A. Yes, sir.

Q. And the defense that Alabama was preparing against that particular formation was you called the 'Bama defense?

A. Yes, sir; it is a version of the 5-3 defense, and we just turned it 'Bama.

Q. That is just a code name?

A. Yes, sir; just a code name.

Q. Would you describe that defense to us, please, or maybe you could do it better if you came here and did it with chalk on the board.

A. Well, first of all—first of all we would have the end playing a 9 technique.

Q. Playing a what?

A. A 9 technique, which is principally outside-in. He's got containment.

Q. What do you mean by "he's got containment"?

A. He has to keep everything from coming outside of him. Then, also we had a man in the 3-technique right here: Then, we had a man—3-technique is between the guard and tackle. This is so he can play both ways and probably draw two blocks from one person, I mean, two blocks by him, therefore, freeing the linebacker so he can be more effective. [fol. 597] Also we had a man head-on the center, right on his nose. Then we had a man in the 4-technique over here. Then we had a man in a 7-technique, what we called—which is head-on this halfback, that is in the slot. Then we had another end and the 9-technique on this side with the same responsibility as this one. This tackle was head-on the tackle. What this defense was primarily supposed to do—also, we had our linebacker in here. Then our big weapon, Leroy Jordan here. And that is basically what the 'Bama defense is.

Q. Is there anything in the use of numerals? I heard you say 9, 3, 4, or something; does that mean anything?

A. It simplifies the learning of your defensive assignment. We have rules for defenses that—for instance, the 9-technique, we have a 1-technique, a 2, 3, 4, 5, 6, 7, 8, and 9, which stretch from here all the way out to here, either in the gaps or on their nose, and doing this it is simplified. Instead of going through the whole thing, you tell them, "Your job is the 3-technique", and they know what the 3-technique man is required to do. Therefore he can carry out his job more effectively and learn it a lot easier, because there is a lot of stuff to that.

Q. This offensive set that is shown here is known as the normal slot?

A. Yes, sir; it is called—it is a normal slot used with every team we played. They use the slot offense, and we use it ourselves.

Q. And I believe you testified that Georgia had used this a number of times in its spring game?

A. They had used it quite a few times in their spring game also in '61, the year of '61. This was one of their offensive formations. So, therefore, the slot formation is nothing new.

[fol. 598] Q. Your scout report man who prepares your scouting reports, does he give the team at the University of Alabama any idea as to what formations he believes Georgia will stress because of having seen it before or the cause of its personnel?

A. Yes, sir. The coach who scouts the opposing—I forgot to mention, when he is scouting the team he has a team permanently. When he is on the staff, very rarely do they change teams. You see, a coach—well, for instance, let's say Auburn. A coach scouting Auburn for five years, he knows their personnel as they develop freshmen, even from high school. Also he knows their coaches. He knows generally how they think, and he is required to express his opinion on what he thinks their strategy will be.

Q. All right, sir. Now, is the 'Bama defense, code name 'Bama—

A. Yes, sir.

Q. —set up primarily for the game that we are talking about?

A. Yes, sir.

Q. Now, in that game on September 22, 1962, did the University of Georgia go into any formation which made that an inadequate defense?

A. Yes, sir; they did.

Q. Will you show what that formation was down here, please, sir?

A. Yes, sir. Early in the first quarter we were going straight in to our 'Bama defense and playing it pretty well. Then they came out in the slot split with the end out here split on the side opposite of the formation, and, as you can see, with Leroy here, with all these men in here, there is where is where we want to play Leroy, that was the idea

of the defense. As you know, Leroy was a tremendous line-[fol. 599] backer, and the object is to keep Leroy in the thick of the battle where he is best, where he can be more effective. Now, we can't move our end out here to cover him, so what we have to do is take Leroy. We have to take Leroy from here and put him out here in the open for a pass defense in playing this particular area in here and the other is still the same. Now, as you can see, Leroy is out here, and where Leroy does his best work is in here, as has been proven, and this weakened our defense in here; it weakened it tremendously. In fact, they ran it only five times the first half, and four times that was successful. Well, they failed—they dropped a pass one time, so three times it was very successful. We could not defend this man and still have our strength in here where we needed it.

Q. Was something subsequently done to rectify the situation?

A. Yes, sir. The coaches in the press box, which is customary, they have scouts up there viewing, and on the telephone, they saw what was happening in this formation. We weren't prepared for this formation as to overshifting to compensate for the change in the formation. So, at the halftime—one of Coach Bryant's basic defenses is what we call the split defense or split six, and going back to directions, going back to just plain stuff, we could compensate and shift to their strength and get Leroy back in here where he can help us or/and be effective.

Q. During the—

A. Would you like for me to show the reason, the split defense, and how it would help us?

Q. Yes, sir.

A. Now, in the split defense we have what we call a rover. He is called in because when they come out of the [fol. 600] huddle, before they line up, he is in the middle; then he will go to either the wide side or the strong side or unbalanced line, whichever is happening at the time, whichever formation they are in, so we go into the split, and we have a man in the 3-technique, as I showed you

before. We have Leroy here. We have a guard in the 3-and have the other linebacker here. Also have a man there, 7 and 9, and over here, which is the tackle, and the rover drops off. Now, as you can see, we have a sound defense now with our strength where we need it in here. We have our personnel, Richard Williamson, the rover, very effective pass defender and outside man, and he was very capable of giving them trouble on that split end out there. Now, Leroy is in here where the thick of the battle is, and everything in here, that is where Leroy can really make hay, and the second half can prove that this was a great help to us, and also Georgia came out in the second half running this formation more effectively, which indicates that they realized they had only run it five times and could have hurt us four, did hurt us three times out of five, could have hurt us four. However, we had changed our defense to something to strengthen our part of it, so, consequently, that formation was weakened and we came out on top.

Q. Thank you, sir, go back to the stand. During the period from September 1st until the Georgia game on September 22, in planning its defenses, did the University of Alabama or not concentrate on any particular two formations?

A. No, sir; they did not.

Q. Any three particular formations?

A. No, sir; I couldn't say that either.

[fol. 601] Q. If the normal slot, as you indicated a moment ago, would have the end three yards out from the tackle—

A. Yes, sir.

Q. —if that end was, say, lined up four yards rather than three, or maybe as many as five yards instead of three, would that cause Alabama to make any basic change in its defense?

A. No, sir; we wouldn't have to make a basic change at all with our split defense, because our ends, defensive ends—I can say this with authority because left tackles were

defensive ends on defense, so he would—he has his rules, and you have your certain coaching points on the defensive techniques. Now, if the end moved out—would you like for me to show you on the board?

Q. Yes, sir.

A. Well, at three yards he would be here, and then the five yards he would be, say, here, with your slot man in here. As you can see on our split defense we have this man—actually, he would be in here with a three-yard split, but to illustrate it so you can see it, I will make it much larger. Now, instead of this guy playing in here on his outside eye, as he would on a 0-technique, he would simply play, maybe, on his inside eye, and consequently playing out through the man in order to do his job of containment and rushing the passer and making sure they did not get outside of him. So, you see, we could still stay in our basic split defense, be fundamentally sound with this man right here playing through his head and getting right there to keep him from coming around.

Q. Thank you, sir. Mr. Pell, for Alabama to know formations and plays which any team that it is going to play, such as the University of Georgia, in advance, what advantage [fol. 602] would that be to Alabama?

A. Well, I can think of no advantage it would be.

Q. What else do you need?

A. You'd need almost a thousand other things before you could use it.

Q. Describe what you are talking about?

A. Well, if a player—if a player would know his opponent's plays, what plays he would run, how he would run them, he does not know what situations he would run them in. For instance, would he run them on first and 10, first down and 10 yards to go for a first, or would he run it on the second down and 2 yards to go for a first? Would he run it on third, fourth; would he—would he run it backed up? Would he run it in the middle of the field? Would he run it on a sideline, one of the hashmarks? Would he run it down there at the score—would he run it on clutch plays?

There are so many things that determine what play should be run. It would take—take so much to drill a boy or a player into knowing what the other team was going to do.

Q. Is what you are saying that knowledge of the play is not important but knowledge of when it is going to be run?

A. That's right. As you know—well, no; I don't suppose anybody has a monopoly on a football play or a formation. Once they imagine up a new formation, there is nothing to keep another team from using the same formation, and in coaching clinics they go over football plays, successful football plays. You can even buy a book in the bookstore that has successful ball plays. So, knowing what the play is does no good. Knowing what the formation is does no good. You have to know how they run it and how effectively they run it and when and where and how.

[fol. 603] Q. Thank you, sir. What is the Alabama philosophy so far as coaching the players or training the players during the week of the game?

A. Well, Coach Bryant, he even said this yesterday at the clinic in a speech, and he firmly believes it, we would always work hard, fairly hard on Monday nights because of the boys having the—the players having labs in the afternoon. We would practice on Monday night pretty hard. Tuesday afternoon we'd practice pretty hard. Wednesday sometimes we'd practice fairly hard. When we say "hard" or "moderately hard"; well, "hard" would be full gear for two hours practice; "moderately" would be an hour and forty-five minutes practice with little full speed hitting, more dummy for perfection drills, getting quick and getting aggressive and going over your assignments. Then, on Thursdays most of the time you'd go out in sweats and go through your game plans, offensive plays, get them down, work on perfection drills again, go through our defense, and a short brisk drill of approximately an hour and thirty-five or forty minutes. And on Friday most of the time we'd have—if we are on the road, we usually get there on Friday, work out in the stadium, a light work out in sweats for approximately, maybe, forty-five minutes, get

loosened up, get used to the field, and then the game on Saturday.

Q. Now, you have played against Georgia for three years?

A. Yes, sir.

Q. In 1962 in Birmingham, speaking from the physical stand-point, how did the two teams compare?

A. Well, Georgia, in both '61 and '62, was both physically larger and stronger than we were in the line; there is no doubt about that. It came out in our scouting reports; we [fol. 604] knew it. The team as a whole in '62, they had fairly much more speed than we did.

Q. Well, the size of a player does not necessarily determine the ability, does it? I mean, not the ability, that is a bad word—that is an unfortunate word.

The Court: You say Georgia had more speed than you did in '62?

The Witness: Not—I say, as a team. Individually I would suppose I would have more speed. But 23—what we mean by speed is just out footracing, but where it counts is when you get real quick, your short movements. When there is not that much between you and an opposing ball player, if you are real quick it doesn't matter how much you play; you can pack a pretty good wallop in that little space, and we had to rely on quickness and desire.

By Mr. Schroder:

Q. Let me ask you this question, sir. In your opinion, can a football game be rigged or fixed without the players knowing about it?

A. No, sir; it could not.

Q. Could a football game be rigged or fixed without the players participating in the—

A. No, sir; it could not; no way.

Mr. Schroder: You may examine him.

Mr. Cody: You may be excused.

[fol. 605] The Court: What are you studying to be, a football coach?

The Witness: Well, I am studying—I am in the School of Commerce. I will be coaching next year.

The Court: All right, sir; thank you.